

1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF PENNSYLVANIA  
3 HARRISBURG DIVISION  
4  
5 THE PUBLIC INTEREST LEGAL,  
6 FOUNDATION,  
7 Plaintiff, No. 1:19-cv-00622-CCC  
8 vs.  
9 KATHY BOOCKVAR, in her official  
10 capacity as Acting Secretary of the  
11 Commonwealth of Pennsylvania,  
12 JONATHAN M. MARKS, in his official  
13 capacity as Deputy Secretary for  
14 Elections and Commission, and the  
15 BUREAU OF COMMISSIONS, ELECTIONS AND  
16 LEGISLATION,  
17 Defendants.  
18  
19 ZOOM DEPOSITION OF  
20 JONATHAN MARKS  
21 SCRANTON, PENNSYLVANIA  
22 FEBRUARY 12, 2021  
23  
24 ATKINSON-BAKER, INC.  
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18  
19  
20  
21  
22  
23  
24  
25

26 ZOOM deposition of Jonathan Marks, taken  
27 on behalf of the Plaintiff, pursuant to the Federal  
28 Rules of Civil Procedure, on Friday, February 12,  
29 2021 scheduled at 10:00 a.m., before Lois Sikoski, a  
30 Court Reporter-Notary Public in and for the  
31 Commonwealth of Pennsylvania.

A P P E A R A N C E S

- - -

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1	I N D E X		
2	WITNESS	EXAMINATION BY	PAGE
3	Jonathan Marks	Ms. Kerns	6
4			
5	EXHIBITS		
6	1	30 (B)(6) Deposition Topics for	14
7		the Pennsylvania Department of	
		State.	
8	2	Public Interest Legal Foundation's	24
9		Request to Inspect Records 10/23/17 to	
		Jonathan Marks	
10	3	December 4th, 2017 letter addressed to	28
		Mr. Jonathan Marks	
11	4	Title 52 United States Code 20507	36
12	5	52 USCS Section 20183	44
13	6	The Administration of Voter Registration	51
14		in Pennsylvania 2018 Report to the	
		General Assembly	
15	7	Section 1222 of Title 25 of the	54
		Pennsylvania Consolidated Statutes	
16	8	County of Allegheny correspondence	66
		canceling voter registration	
17	9	Reports Menu	73
18	10	Philadelphia Voter Listing with Dates	77
19	11	4/12/16 letter to Shawna Powell	85
20	12	House State Government Committee	112
21		Public Hearing on Non-citizens Voting	
		October 25th, 2017	
22	13	Kathryn Boockvar Friday, 4/27/18 e-mail	132
23	14	Senate State Government and Transportation	151
24		Committee Public hearing on Motor Voter,	
		Unlawful Voting and Cybersecurity	
25	15	Commissioner Al Schmidt videotape testimony	157

1	EXHIBITS (Continued)	
2	16 Commissioner Al Schmidt videotape testimony	179
3	17 Statement Voter Registration and Election Integrity	188
4	18 December 2019 Pennsylvania Auditor General's Performance Audit Report	197
5	19 April 27, 2018 DOS letter	209
6	20 June 12, 2018 DOS letter	209
7	21 DOS e-mail re: voter record verification	222
8	22 Defendant's Responses to Plaintiff's Interrogatories	226
9	23 February 29, 2008 letter to Harry VanSickle from Jury Administration Supervisor Robert V. Barth, Jr.	229
10		
11	24 City Life article	232
12	25 County of Allegheny Department of Administrative Services Elections Division	235
13		
14	26 4/30/18 e-mail from Kathryn Boockvar	237
15	27 Jonathan Marks 8/10/18 e-mail	242
16	28 exhibits sent in e-mail on 2/11/21	246
17		
18		
19		
20		
21		
22		
23		
24		
25		

P R O C E E D I N G S

JONATHAN MARKS,

was examined and testified as follows:

EXAMINATION

BY MS. KERNS:

Q. Good morning. My name is Linda Kerns,  
Mr. Marks. I represent the Public Interest Legal  
Foundation.

Can you hear me?

A. Good morning, Ms. Kerns.

I can.

Can you hear me okay?

Q. Yes, I can.

A. Great.

Q. I don't know if you've participated in any  
of these ZOOM depositions or court hearings before,  
but in, in live-person court, a lot of times there's  
a challenge as far as, you know, attorneys may be  
talking before the witness is finished talking or  
the witness talking before the attorney is finished  
talking. And I've noticed that in these ZOOM-type  
proceedings, that kind of gets magnified. So we'll  
just have to take extra special care that, you know,  
maybe to take a breath before we answer each other  
or there's going to be a lot of talking over.

1 That's just in my experience. So I just wanted to  
2 let you know about that first. I'm sure the Court  
3 Reporter will appreciate that.

4 And as far as exhibits go, we have --  
5 we're going to use the "Chat" feature, and we'll  
6 send everyone a copy of each exhibit. And you can  
7 get that from the bottom of your screen. There  
8 should be a "Chat" button.

9 And did you see that button?

10 A. Yes.

11 Q. Okay.

12 So when I'm ready to send an exhibit, if  
13 you click on that window, it should open, and then  
14 the exhibit will appear, and then you can have the  
15 option of downloading it and looking at it or just  
16 looking at it in the "Chat" button in the, in the  
17 window. So just let me know if that's not working.

18 And we'll be sharing the exhibits on the  
19 screen too.

20 Okay?

21 MS. WALSH: Yes.

22 A. Okay.

23 Q. All right.

24 Mr. Marks, have you ever been deposed  
25 before?

1           A.    I have, yes.

2           Q.    And about how many times have you been  
3   deposed?

4           A.    Depositions, probably in the double  
5   digits, for sure. I've testified quite a bit over  
6   my career, so.

7           Q.    So you probably know how this works, but  
8   for the sake of the record, I'm just going to go  
9   over everything and the ground rules.

10                You understand that you're under oath and  
11   that you must answer my questions fully, completely  
12   and truthfully.

13                Do you understand?

14           A.    I understand, yes.

15           Q.    Now, we have a Court Reporter on the call.  
16   She already introduced herself. And she's going to  
17   record everything. So when you answer, you have to  
18   use the words "Yes" or "No" when responding, instead  
19   of shaking your head or saying "hm-mm" or "um"  
20   because those types of answers are not clear on the  
21   record.

22                Will you be able to do that?

23           A.    I will, yes.

24           Q.    And if you do not understand a question,  
25   or our connection cuts out, or you couldn't hear me,



1 or you just weren't sure what I was saying, you can  
2 ask me to repeat it or clarify.

3 So will you do that for me?

4 A. I will, yes.

5 Q. Because if you answer a question, I'm  
6 going to assume that you heard the question that I  
7 asked.

8 A. Right.

9 Q. And this is not a marathon. I don't want  
10 to torture anybody. If you need a break, that's  
11 fine, just let us know. I just ask that if there's  
12 a question pending, you answer the question prior  
13 to, prior to us going on break.

14 A. Understood.

15 Q. And are you this morning under the  
16 influence of any substance or anything that would  
17 prohibit you from understanding my questions or  
18 being able to answer them completely and truthfully?

19 A. Other than the caffeine from my coffee,  
20 no.

21 Q. Yeah. All right.

22 Well, I have caffeine too. So that's  
23 fine.

24 Now, do you understand that you are here  
25 giving testimony on behalf of the Pennsylvania

1 Department of State?

2 A. I do.

3 Q. So I'll be asking a lot of questions, and  
4 I may use the word "you", or "your office", or "the  
5 Department", but for the vast majority of these  
6 questions, I'm asking about the knowledge of the  
7 Department of State.

8 So will that make sense to you?

9 A. It will, yes.

10 Q. And when I say "the Department of State",  
11 most times I'll be referring to subordinate offices  
12 within the Elections Division, such as the Bureau of  
13 Commissions, Elections, and Legislation.

14 Do you understand that?

15 A. I do, yes.

16 Q. And if I need to ask you something  
17 personally, I'll try to clarify that, but if I do  
18 not for some reason clarify it appropriately, will  
19 you just let me know?

20 A. Yes. I'll ask for a clarification  
21 whenever necessary.

22 Q. All right.

23 MS. WALSH: And, Ms. Kerns, before we go  
24 further, I'd just like to note for the record that  
25 we did serve objections to the Rule 30(b)(6) notice,

1 and they would apply here today as well.

2 MS. KERNS: Thank you.

3 Q. So I do -- and I also want to note that I  
4 received some documents last night here in my  
5 office, I think it was past 6:00, if not closer to  
6 7:00 p.m. by e-mail. These apparently were  
7 responsive to the Discovery Requests that my office  
8 had sent out last summer. They were -- the file,  
9 there were some type of a problem with the file. So  
10 when I opened it, I could only see a couple of  
11 pages.

12 So I'm just -- we let you know that, and I  
13 want to say for the record, that you did resend  
14 another copy this morning at around 9:30, about a  
15 half hour before the deposition was about to begin.  
16 So we obviously have not had a chance to look at  
17 those in any type of detail. So I want to preserve  
18 our right, if we need to, to either extend this dep  
19 or reopen it, based on what are in those records.

20 MS. WALSH: And we don't agree that that's  
21 something that needs to take place, but we  
22 understand you're preserving your position.

23 Q. All right.

24 Now, Mr. Marks, we're here on the case of  
25 the Public Interest Legal Foundation versus Kathy

1 Boockvar. The Docket No. is 1:19-CV-622.

2 Are you personally familiar with this  
3 case?

4 A. I am, yes.

5 Q. Can you please tell me what you know about  
6 it?

7 MS. WALSH: Objection to form.

8 A. Well, I have reviewed the various filings.  
9 I've reviewed the interrogatories. I've reviewed  
10 our responses to those. So I'm familiar with the  
11 case and the various elements of the case.

12 Q. And do you know what records we are -- my  
13 client is seeking from the Department of State in  
14 this case?

15 MS. WALSH: Objection to form.

16 A. I -- yes.

17 Q. And what are those records?

18 MS. WALSH: Objection to form.

19 A. As I understand it, the -- your client is  
20 seeking records related to an analysis of both  
21 PennDOT database and the Statewide Uniform Registry  
22 of Electors.

23 MS. WALSH: I just note a further  
24 objection to the extent that there were written  
25 requests for information, which, obviously, are in

1 writing and speak for themselves.

2 Q. Mr. Marks, do you have any notes in front  
3 of you, or a computer screen, or anything that  
4 you're referring to while you're answering my  
5 questions?

6 A. I do not, no.

7 Q. Besides speaking with your attorney or  
8 attorneys, did you personally do anything to prepare  
9 for this deposition?

10 A. I did. I reviewed, again, the various  
11 filings that were made in the case, our responses to  
12 those filings. I reviewed the records that the  
13 Department turned over during discovery.

14 Q. When you say you reviewed the records, did  
15 you review all of the records, including what was  
16 turned over last night?

17 A. I did, yes.

18 Q. Okay.

19 I'm going to refer to Exhibit 1 right now.  
20 So my colleague will bring that up for us, and he's  
21 going to share it on the screen.

22 Can you see that okay?

23 MS. WALSH: Not yet.

24 MS. KERNS: All right. I have it on my  
25 screen.

1 Ms. Walsh, do you have it on your screen?

2 MS. WALSH: No. We're attempting to pull  
3 it up.

4 MS. KERNS: I didn't have to do anything.  
5 It just appeared when he shared it.

6 MS. WALSH: We did not have the same  
7 screen view then. It's -- we're not able to see it  
8 yet.

9 MS. KERNS: Do you see it now?

10 MS. WALSH: Yes. Is it the 12 deposition  
11 topic?

12 MS. KERNS: Right.

13 MS. WALSH: Yes.

14 A. Yes, I can see it. It's a little, a  
15 little far away.

16 MS. KERNS: So for the Court Reporter this  
17 is going to be Exhibit 1.

18 (Deposition Exhibit No. 1 marked for  
19 identification.)

20 Q. And this is -- the caption at the top says  
21 "Rule 30 (B) (6) Deposition Topics for the  
22 Pennsylvania Department of State."

23 And, Mr. Marks, this was sent to your  
24 counsel prior to this deposition.

25 Did anyone show this to you prior to

1 today?

2 MS. WALSH: I'll just note an objection to  
3 the extent we've also served objections to this  
4 notice, as I mentioned earlier.

5 You can answer.

6 A. Yes, I did see a copy of it.

7 Q. And did you review it prior?

8 A. I did, yes.

9 Q. And did you talk to anyone about the  
10 topics on this list?

11 A. Sorry. I'm having -- I don't know if I'm  
12 going to be able to read all, all of the details  
13 from this distance, but --

14 MS. WALSH: Would you be able to send us a  
15 copy of the document that you've put up? We'll  
16 print it out and we'll put it before the witness.

17 MS. KERNS: Send it by how? By e-mail?

18 MS. WALSH: That would be fine.

19 MS. KERNS: To whose e-mail address?

20 MS. WALSH: You can send it to  
21 dwalsh@mbklaw.com.

22 A. That's better.

23 Yeah. We just, we just blew it up. So  
24 it's little easier for me.

25 I just wanted to make sure I was looking

1 at the correct document.

2 Q. Okay.

3 So I'm going to repeat my question.

4 Did you talk to anyone else about the  
5 topics on this list prior to this deposition?

6 A. Yes. I spoke to counsel for the  
7 Department and, and also counsel here.

8 Q. Anyone else besides your counsel?

9 A. No.

10 Q. Now, you had earlier said that you had  
11 reviewed the answers to the various Discovery  
12 Requests that my office sent to the Department of  
13 State.

14 Did you personally help prepare the  
15 answers to any of those Discovery Requests?

16 A. The answers were prepared by counsel. I  
17 did review the answers.

18 MS. WALSH: And I'll just note an  
19 objection to the extent I don't think she would be  
20 asking you to divulge communications that you had  
21 with counsel concerning any discovery matters, but I  
22 caution you not to, to disclose any information.

23 THE WITNESS: Understood.

24 Q. So were you asked to find any documents  
25 that were responsive to those Discovery Requests?



1           A.    Yes.

2           Q.    And there was an additional batch of  
3 documents sent to my office, I believe it was last  
4 week. I don't remember the date.

5                   Are you familiar with that batch of  
6 documents?

7           A.    I, I don't know exactly what was sent to  
8 your office last week.

9           Q.    Are you aware that there was additional  
10 documents sent to my office last week?

11          A.    I was aware that there was additional  
12 discovery documentation sent to your office.

13          Q.    Do you know why those documents were not  
14 sent until last week as opposed to last fall when  
15 the rest of the documents were sent over?

16          A.    I do not.

17          Q.    Do you know why the documents that were  
18 sent to my office last night were just sent last  
19 night and not last fall when the rest of the  
20 documents were sent?

21          A.    I do not.

22          Q.    Who prepared -- who provided those  
23 documents to your counsel?

24          A.    Again, I don't know exactly what documents  
25 were sent to you, but I did provide all documents in

1 my records that -- at the initial Discovery Request.

2 Q. Okay.

3 Well, then, let's talk about what was sent  
4 last night.

5 Are you familiar with that batch of  
6 documents that were sent last night?

7 A. I think I've answered that. I'm not -- I  
8 wasn't on the e-mail or the communications. So I  
9 don't have personal knowledge of exactly what was  
10 sent last night.

11 Q. Prior to me mentioning it this morning in  
12 this deposition, were you aware that additional  
13 documents were sent to me last night?

14 A. I was not.

15 Q. All right.

16 Mr. Marks, what is your current job title?

17 A. I'm the Deputy Secretary for Elections and  
18 Commissions at the Pennsylvania Department of State.

19 Q. And how long have you held that position?

20 A. Since February of 2019.

21 Q. And what was your position -- were you  
22 with the Department of State prior to February of  
23 2019?

24 A. I was, yes.

25 Q. And what was your position then?

1           A.     I was the Commissioner of the Bureau of  
2       Commissions, Elections and Legislation.

3           Q.     And how long were you in that position?

4           A.     From October 2011 through February  
5       February 2019.

6           Q.     And prior to 2011, were you with the  
7       Department of State?

8           A.     I was, yes.

9           Q.     And what was your position then?

10          A.     I was the Chief of the Division of the  
11       Statewide Uniform Registry of Electors, or SURE.

12          Q.     And how long were you in that position?

13          A.     That was May 2008 through October of  
14       2011.

15          Q.     And prior to that, were you with the  
16       Department of State?

17          A.     I was.

18          Q.     And what was your position then?

19          A.     I was Chief of the Division of Elections.

20          Q.     And in what time period?

21          A.     In the Bureau of Commissions, Elections  
22       and Legislation, that would have been from about  
23       2004 through 2008.

24          Q.     And what were you doing prior to 2004?

25          A.     For a couple of years prior to that, I was

1 a legal assistant assigned to the Bureau of  
2 Commissions, Elections and Legislation.

3 Q. So what year did you start with the  
4 Department of State?

5 A. Well, I actually started with the  
6 Department of State about 10 years earlier than  
7 that, 1993, in the bureau -- corporation bureau.

8 Q. So with your current position, can you  
9 tell me what your job duties are?

10 A. Well, my job duties are to oversee the  
11 Bureau of Elections and Notaries, the Bureau of  
12 Elections -- Election, Security and Technology, as  
13 well as the Bureau of Campaign Finance and Civic  
14 Engagement. Most of my duties relate to overseeing  
15 the Department's day-to-day operations regarding  
16 election administration, campaign finance, lobbying  
17 disclosure.

18 We do other things that are rarely talked  
19 about, but it also includes notaries, all -- roughly  
20 80,000 Commissioned Notaries have to apply or  
21 register with the Department of State. So that's,  
22 that's pretty much the crux of what I do.

23 Q. Who do you report to?

24 A. I report to the Executive Deputy Secretary  
25 of the Department as well as the Secretary of the

1 Commonwealth.

2 Q. Who's the current Executive Deputy  
3 Secretary of the Commonwealth?

4 A. Sari Stevens.

5 Q. And is there anyone acting in the  
6 Secretary position now?

7 A. Yes. Veronica Degraffenreid.

8 Q. I'm sorry. Can you repeat that?

9 A. Veronica Degraffenreid.

10 Q. Now, with regard to your job duties, do  
11 you have any specific responsibilities related to  
12 the -- in your current position related to the SURE  
13 system, the Statewide Uniform Registry of Electors?

14 A. I do, inasmuch as the Bureau of Elections,  
15 Security and Technology actually handles the  
16 day-to-day operation of the SURE system or our  
17 support of the SURE system for the various county  
18 election boards.

19 Q. What are your specific responsibilities  
20 with regard to the SURE system?

21 A. Well, again, I oversee the Bureau that  
22 handles the day-to-day operations. So it's, it's,  
23 you know, providing sign-off approval on various  
24 projects related to the SURE system, also ensuring  
25 that the day-to-day operations of -- related to the

1 SURE system are running smoothly.

2 Q. Are you involved with requests for public  
3 records as they relate to the SURE system?

4 A. I'm involved to the extent that I may need  
5 to review requests for public records. You're  
6 talking about -- I'm not sure exactly what kind of  
7 requests you're referring to, but if, if we get a  
8 request for a public information, it will -- if it's  
9 a Right-to-Know request, for example, it will go  
10 through our Right-to-Know officer. Some other  
11 requests may go through our counsel's office.

12 Q. So what kind of requests would go to the  
13 Right-to-Know office as opposed to the counsel's  
14 office?

15 A. Well, it would be requests for public  
16 information made under the Right-To-Know --  
17 Pennsylvania's Right-to-Know Law.

18 Q. So what would, then, go to the counsel's  
19 office as opposed to the Right-to-Know office?

20 A. Well, it would depend on, it would depend  
21 on the request. You know, obviously there's  
22 publicly available information.

23 For example, we publish, on a weekly  
24 basis, what we call the Full Voter Export. Again,  
25 if, if we're requested -- if information is

1 requested outside of what is, is made publicly  
2 available, we often consult with our counsel's  
3 office to determine if we're able to provide that  
4 information or if we're able to provide it -- you  
5 know, some of the information. So that's, that's  
6 something we work with our counsel's office on to  
7 determine what is appropriate to provide.

8 Q. So are requests for information personally  
9 handled by you? Or do you have people that report  
10 to you that handle this type of information?

11 MS. WALSH: Objection to form.

12 A. I -- if you're talking about the requests  
13 themselves, they, they may come in through, you  
14 know, any, any number of areas within the  
15 Department. But as I said, we will -- you know, if  
16 it's a request for something that is publicly  
17 available, it will be provided just upon request.

18 If it's a request for information that's  
19 not publicly available, we consult with our counsel  
20 to determine if we need to respond to the request,  
21 either in whole or in part.

22 Q. And in your current position, how many  
23 people report to you?

24 A. Directly report to me, three.

25 Q. And then how about indirectly, how many

1 people report to you?

2 A. Well, the -- between the three bureaus  
3 that I referenced earlier, there's roughly two dozen  
4 people total.

5 Q. Okay.

6 I'm going to go to an exhibit now, Exhibit  
7 2. And this is Docket Entry 1-9. And it's a copy  
8 of the Public Interest Legal Foundation's Request to  
9 Inspect Records addressed to you dated October 23rd  
10 2017.

11 We're going to put that up on the screen.

12 So, Mr. Marks, let me know when you can  
13 see that letter.

14 A. I can see it.

15 (Deposition Exhibit No. 2 marked for  
16 identification.)

17 MS. KERNS: Okay. Great.

18 Could we go off the record for just a  
19 second, because I'm having a problem with my screen  
20 and I just need to fix it.

21 MS. WALSH: Sure.

22 MS. KERNS: Do you mind if we take a quick  
23 break? Does anyone mind if we take a quick break?

24 MS. WALSH: No problem.

25 (Whereupon, there was a recess in



1 proceedings.)

2 MS. KERNS: Okay. We're going to go back  
3 on the record. Thank you for that. I apologize for  
4 the brief break.

5 Q. So, Mr. Marks, I have what I have marked  
6 as Exhibit 2 up on the screen.

7 Can you see that document on your screen?

8 A. I can, yes.

9 MS. KERNS: And Court Reporter, can you  
10 see it?

11 COURT REPORTER: Yes, ma'am.

12 Q. All right, Mr. Marks. Did the Department  
13 of State receive this letter?

14 MS. WALSH: Objection to form.

15 A. Yes.

16 Q. And who would have been the person in  
17 charge of handling this letter?

18 MS. WALSH: Objection to form.

19 A. Well, as I said, this, this letter, it was  
20 addressed to me. So I would have received it and  
21 consulted with our counsel on an appropriate  
22 response.

23 Q. And did the Department of State produce  
24 any records in response to this letter?

25 A. As I recall, no. We replied to the

1 letter.

2 Q. At the time you received the letter, did  
3 any records exist that would have been responsive to  
4 the request?

5 MS. WALSH: Objection to form.

6 A. I don't believe so, no.

7 Q. I'm going to give you a chance to take a  
8 look at that letter. So let's go to paragraph 1 on  
9 the first page.

10 MS. WALSH: So you're controlling the --  
11 you need to make it a little bit larger but feel  
12 free to reach out and call out, you know, how you  
13 would like to --

14 THE WITNESS: Sure.

15 MS. WALSH: -- if you can't see, you know,  
16 the full paragraph or all of the language.

17 A. And you're -- Ms. Kerns, you're referring  
18 to the paragraph that begins, "Pursuant to  
19 Section 20507," and then it has a numbered list  
20 starting with No. 1?

21 Q. Right.

22 So when you received that letter, you or  
23 the Department received that letter on or about  
24 October 23rd, 2017, were there any records in  
25 existence that were responsive to this letter?

1 MS. WALSH: Objection to form; also to the  
2 extent that it's calling for a legal conclusion.

3 A. I'm sorry. I'm just reading the paragraph  
4 in full.

5 No.

6 Q. What did somebody just hand you?

7 MS. WALSH: The letter.

8 A. A paper copy of the letter.

9 Q. So just so I'm clear, in -- on or about  
10 October 23rd, 2017, there were no records that would  
11 have been responsive to request No. 1?

12 MS. WALSH: Objection to form; also to the  
13 extent it calls for a legal conclusion, and it's  
14 been asked and answered.

15 A. That's correct, yes.

16 Q. And I'm going to go through and ask the  
17 same question of paragraphs two, three, and four.

18 Were there any -- at the time you received  
19 it, were there any records in the possession of the  
20 Department that were responsive to any of those  
21 requests?

22 MS. WALSH: Objection to form and to the  
23 extent it calls for a legal conclusion.

24 A. No.

25 Q. How about, as we sit here today, are there

1 any records responsive to this request, starting  
2 with, starting with paragraph 1?

3 MS. WALSH: Same objection.

4 A. No.

5 Q. And as we sit here today, are there any  
6 records responsive to paragraph 2?

7 MS. WALSH: The same objection.

8 A. No.

9 Q. The same question for paragraph 3. As we  
10 sit here today, are there any records responsive to  
11 paragraph 3?

12 MS. WALSH: The same objection.

13 A. No.

14 Q. And as we sit here today, are there any  
15 records in existence that would be responsive to  
16 question paragraph No. 4 that begins "all  
17 communications regarding list maintenance"?

18 MS. WALSH: The same objection.

19 A. No.

20 Q. Okay. I'm going to move on to Exhibit 3.  
21 (Deposition Exhibit No. 3 marked for  
22 identification.)

23 Q. So we're going to put that up on the  
24 screen.

25 Okay.

1           What I've marked as Exhibit 3 is the  
2           December 4th, 2017 letter addressed to Mr. Jonathan  
3           Marks.

4           MS. WALSH: Ms. Kerns, we don't see it yet  
5           on our screen.

6           Okay. We've got it now.

7           Q. Mr. Marks, can you see that, what I've  
8           marked as Exhibit 3?

9           A. Yes. This is the December 4th, 2017  
10          letter from Public Interest Legal Foundation.

11          Q. Did the Department of State receive that  
12          letter?

13          MS. WALSH: Objection to form.

14          A. Yes, I believe so.

15          Q. When you say "believe so", is there  
16          anything else that you need to check to be sure that  
17          you received the letter?

18          A. I -- I'm only looking at the top of the  
19          letter at the moment. So maybe if I -- if we scroll  
20          down and read the letter, just to confirm.

21          Q. Okay.

22          Let me know when you've reviewed it.

23          A. Okay. You can --

24          Okay.

25          Q. Are you saying "okay" because you've

1 reviewed it?

2 A. No. I'm sorry. I was saying "okay" to  
3 you can scroll to the second page. I apologize.

4 Okay. I've finished reviewing it.

5 Yes, we received that letter.

6 Q. Who would have been in charge of  
7 processing this request?

8 MS. WALSH: Objection to form.

9 A. Well, again, this, this, this is a request  
10 that we would have, we would have consulted with our  
11 counsel on to determine if there were any responsive  
12 records.

13 Q. And did the Department of State produce  
14 any records that was responsive to this letter?

15 MS. WALSH: Objection to form and to the  
16 extent it calls for a legal conclusion.

17 A. I believe we replied to the letter.

18 Q. Did the Department?

19 A. Ms. Kerns, just -- I just want to make you  
20 aware, I have a paper copy of the letter now.

21 Q. You just said that you received -- I'm  
22 sorry. I think your answer was the Department of  
23 State replied to the letter. So my question was did  
24 the Department of State produce any records in  
25 response to this request?

1           A.    My recollection, no.

2           Q.    At the time that you received that letter,  
3           which would have been on or about December 4th,  
4           2017, did any records exist that were responsive to  
5           this request?

6                   MS. WALSH:  Objection to form and to the  
7           extent it calls for a legal conclusion.

8           A.    No.

9           Q.    Who made the decision that there were no  
10           records responsive to this letter marked as  
11           Exhibit 3?

12                   MS. WALSH:  Objection to the extent it  
13           calls for communications with counsel that are  
14           protected from discovery.

15           A.    Yes.

16                   The decision was made in the  
17           consultation -- I'm sorry.

18                   MS. WALSH:  I'm sorry.  I'm just  
19           cautioning you not to disclose communications you  
20           had with counsel.

21           Q.    Did you make the decision, Mr. Marks, not  
22           to respond to this -- not to produce records in  
23           response to this letter?

24                   MS. WALSH:  Same objection.

25           A.    Well, the -- yes.  The Department made the

1 decision that our response was appropriate.

2 Q. Did any records exist that would have been  
3 responsive to this letter?

4 MS. WALSH: Objection; calls for a legal  
5 conclusion, and it's been asked and answered.

6 A. No. Our response is self-explanatory.

7 Q. Okay.

8 So I'm going to direct you to the  
9 letter -- it's the paragraph that starts with "with  
10 regard to Request 1(a), documents sought would most  
11 recently include."

12 Are there any records, as we sit here  
13 today, that are responsive to that request?

14 MS. WALSH: Are you referring to the first  
15 page of Exhibit 3?

16 MS. KERNS: Yes.

17 MS. WALSH: To the first bullet?

18 MS. KERNS: Yes, the first bullet,  
19 exactly.

20 A. Yes, I have it.

21 With regard to request 1(a), that's the  
22 paragraph you're referring to, the bullet?

23 Q. Right.

24 A. Is there a question pending?

25 Q. Yes. I'm sorry if I wasn't clear.



1           My question was are there any records that  
2 exist today that are responsive to that request?

3           MS. WALSH: Objection to form and to the  
4 extent it calls for a legal conclusion.

5           A.    No.

6           Q.    I'm going to move onto the second bullet  
7 point that starts as "Request 2".

8           Do you see that, Mr. Marks?

9           A.    I do.

10          Q.    Are there any documents that exist today  
11 that are responsive to that request?

12          MS. WALSH: Objection to form and to the  
13 extent it calls for a legal conclusion.

14          A.    My understanding that any documents  
15 responsive to this request were provided during  
16 discovery.

17          Q.    So my question was do any records exist  
18 today that are responsive to this request. And your  
19 response is that those records were provided during  
20 discovery.

21                So would your answer to my question are  
22 there any records responsive to this request that  
23 exist today be "Yes" or "No"?

24          MS. WALSH: Objection; asked and answered.

25          A.    Okay.

1           It would be "Yes", and those documents  
2       would have been provided during discovery.

3           Q.     Did those documents exist in December of  
4       2017?

5           A.     I don't recall that they did.

6           Q.     Is there anything that would help you  
7       refresh your recollection as to whether they existed  
8       in December of 2017?

9           MS. WALSH:  Objection to form.

10          A.     I, I don't think there was anything that  
11       would refresh my memory.

12          Q.     Okay.

13                 Let's go to the next bullet point, Request  
14       4.  As we sit here today, are there any records in  
15       existence described by that Request No. 4?

16          A.     No.

17          Q.     With regards to Exhibit 2 and Exhibit 3,  
18       do you --

19                 MS. WALSH:  I'm sorry, Ms. Kerns.  So the  
20       record is clear, that's the October 23rd letter and  
21       the December 4th letter?

22                 MS. KERNS:  Yes.

23                 MS. WALSH:  Thank you.

24          Q.     Mr. Marks, your testimony is that yes,  
25       records exist that are responsive to Request No. 2,

1 which is the bullet point in the Exhibit 3  
2 December 4th, 2017 letter, but you answered "no", to  
3 any records that would have been responsive to the  
4 other request.

5 Before we move on to the next exhibit, do  
6 you want to change your testimony, after thinking  
7 about it? Or do you want the testimony that you  
8 made to stand?

9 MS. WALSH: Objection to form.

10 A. I want --

11 MS. WALSH: Depending on what you're  
12 asking.

13 A. I, I want the testimony to stand.

14 Q. Mr. Marks, are you familiar with the  
15 National Voter Registration Act, the NVRA?

16 A. I am, yes.

17 Q. Okay.

18 I'm going to now introduce Exhibit 4,  
19 which is going to show up on your screen.

20 Let me know when you can see that.

21 Can you see that, Mr. Marks, yet?

22 A. Yes. This is a document that -- the top  
23 header 52 USCS Section 20507.

24 MS. KERNS: Okay.

25 So I'm going to mark this as Exhibit 4.

1 (Deposition Exhibit No. 4 marked for  
2 identification.)

3 Q. And this is a copy of Title 52 United  
4 States Code 20507. And I'm going to represent that  
5 this is part of Section 8 of the National Voter  
6 Registration Act. And I am going to go to  
7 Section (i) (1). And we'll move to that on your  
8 screen, where it says "Public disclosure of voter  
9 registration activities".

10 Can you see that?

11 A. Yes.

12 Q. And I'm going to read that section. It  
13 says, "Each State shall maintain for at least 2  
14 years and shall make available for public inspection  
15 and, where available, photo copying at a reasonable  
16 cost, all records concerning the implementation of  
17 programs and activities conducted for the purpose of  
18 ensuring the accuracy and currency of official lists  
19 of eligible voters, except to the extent that such  
20 records relate to a declination to register to vote  
21 or to the identify of a voter registration agency  
22 through which any particular voter is registered."

23 A. Ms. Kerns, I just want to let you know I  
24 was handed a paper copy of this exhibit as well.

25 Q. Okay.

1 I'll give you a chance to go to Section  
2 (i), No. 1.

3 Have you had a chance to look at it?

4 A. I have, yes.

5 Q. Is your office, meaning the Department of  
6 State, familiar with that provision of the National  
7 Voting Rights Act?

8 A. Yes.

9 Q. Are you personally familiar with that  
10 provision of the National Voting Rights Act?

11 A. I am, yes.

12 Q. Is your office, meaning the Department of  
13 State, required to comply with this provision of the  
14 National Voting Rights Act?

15 MS. WALSH: Objection to form to the  
16 extent it calls for a legal conclusion.

17 A. Yes. I believe the Department and, and  
18 other jurisdictions within the Commonwealth would  
19 have to comply.

20 Q. What do you mean by "other jurisdictions  
21 within the Commonwealth"?

22 A. It would be the county election offices.

23 Q. When you say "county election offices",  
24 can you explain what you mean by how they're  
25 required to comply with provisions of the National

1 Voting Rights Act?

2 MS. WALSH: Objection to the extent it  
3 calls for a legal conclusion.

4 A. Well, in, in the Commonwealth of  
5 Pennsylvania, the county -- to be more specific, the  
6 county voter registrar is actually the one that has  
7 the records related to voter registration. Those  
8 are within the purview of the county voter  
9 registrar.

10 Q. So if your office -- so is it, is it your  
11 office that is required to comply with provisions of  
12 the National Voting Rights Act? Or is it the county  
13 registrars who are required to comply?

14 MS. WALSH: Objection to form and also to  
15 the extent it calls for a legal conclusion.

16 A. I -- my, my understanding is it's both.

17 Q. Which office would have the ultimate  
18 responsibility to make sure that this provision of  
19 the NVRA is being complied with?

20 MS. WALSH: Objection to form and to the  
21 extent it calls for a legal conclusion.

22 A. Well, again, I believe both ultimately  
23 would have the responsibility to comply with it.

24 Q. Okay.

25 The excerpt that I just read and that

1 we've been referring to -- and you can see from  
2 Exhibit 4 in front of you -- refers to, quote,  
3 "Programs and activities conducted for the purpose  
4 of ensuring the accuracy and currency of official  
5 lists of eligible voters."

6 Do you see that part in the exhibit and we  
7 highlighted it on the screen?

8 A. I do, yes.

9 Q. Does the Commonwealth of Pennsylvania have  
10 programs and activities conducted for the purpose of  
11 ensuring the accuracy and currency of the official  
12 lists of eligible voters?

13 MS. WALSH: Objection to the form to the  
14 extent it calls for a legal conclusion.

15 A. Pennsylvania does, yes.

16 Q. Well, what are the programs and activities  
17 that the Commonwealth of Pennsylvania has?

18 A. Those are statutorily defined. They  
19 include the National Change of Address Program, the  
20 five-year notice, and as an alternative, I believe  
21 mass confirmation mailing would be considered under  
22 this section.

23 Q. With regard to that section, what is your  
24 understanding of the meaning of the terms "accuracy  
25 and currency of the official lists"?

1 MS. WALSH: Objection to form to the  
2 extent it calls for a legal conclusion.

3 A. I mean I believe I would read the entire  
4 phrase, "implementation of programs and activities  
5 conducted for the purpose of ensuring the accuracy  
6 and currency." And that would include the voter  
7 list maintenance activities prescribed by  
8 Pennsylvania's voter registration law.

9 Q. So for an official list of eligible voters  
10 to be accurate and current, does that mean that the  
11 lists should only include eligible registrants?

12 MS. WALSH: Objection to form to the  
13 extent it calls for the legal conclusion.

14 A. I believe that it certainly is the purpose  
15 of this statute and the Pennsylvania laws that I  
16 referred to that the list be accurate. And that's  
17 the purpose of those lists maintenance programs.

18 Q. So what do you mean by "accurate"? What  
19 would your description be of an accurate list?

20 A. Well, an accurate list would be every  
21 voter who is qualified and who has met the statutory  
22 statutory requirements to register are on the roles.

23 Q. So, Mr. Marks, by that answer, if there  
24 are people who are not on the roles, yet, would  
25 otherwise be eligible, is it your testimony that



1 it's the Department's job or role to get those  
2 people on the rolls?

3 MS. WALSH: Objection to form. Also --  
4 Go ahead.

5 A. I don't think it's the Department's job to  
6 get them on the rolls. What I said is anyone who  
7 met the statutory requirements, which includes  
8 registering to vote. So the voter would have to  
9 take the action of registering to vote to be on the  
10 voter rolls, but it's certainly our responsibility  
11 to ensure that anyone who meets the qualifications,  
12 who has taken that action, is on the rolls.

13 Q. And once someone is on the rolls, what is  
14 the Department's responsibility with regard to  
15 maintaining the accuracy and currency of those  
16 rolls?

17 MS. WALSH: Objection to form. It speaks  
18 and it calls for a legal conclusion.

19 A. Well, through the SURE system, we support  
20 the county's -- the county voter registrar's  
21 statutory obligation to conduct voter list  
22 maintenance.

23 Q. And what does that involve?

24 A. That involves providing information to the  
25 counties through the SURE system that we obtain for

1 the National Change of Address Program, the counties  
2 also -- it can conduct the five-year notice mailing  
3 through the SURE system.

4 Q. When you say the counties "can conduct",  
5 does the Department of State give any directives to  
6 the counties as to what they are supposed to be  
7 conducting?

8 A. We do, yes.

9 Q. And what are those directives?

10 A. Well, we provide, we provide counties with  
11 information every year and reminders regarding their  
12 responsibility, under both NVRA and Pennsylvania  
13 law, to conduct annual list maintenance programs,  
14 and we remind them of the deadline by which they  
15 must conduct those programs.

16 Q. Other than reminding, does the Department  
17 of State take any action to make sure that those  
18 programs are conducted appropriately?

19 A. We do monitor the counties' -- the conduct  
20 of, of the list maintenance activities.

21 Q. How do you do that?

22 A. We, we basically determine if counties  
23 have, have generated the notices that they're  
24 required to generate and send out to voters.

25 Each of these programs obviously requires

1 notification to the voter.

2 Q. Other than --

3 A. And we report on all of that activity  
4 annually. And that's published on our Web site.

5 Q. Other than making sure that the notices go  
6 out to voters, do the Department of State take any  
7 other action as far as monitoring what the counties  
8 are doing with regard to list maintenance?

9 A. I'm not sure what you mean by any other.

10 Q. So once the Department of State has  
11 information that the counties sent out notices to  
12 voters, does the Department of State do any follow  
13 up with the counties as to what happened with those  
14 notices?

15 A. Well, that's, that's completely  
16 transparent, and it's, it's reported on an annual  
17 basis, so, yes. But that's something that the  
18 general public can monitor as well.

19 Q. Okay.

20 I'd like to talk about the SURE system.  
21 And we've already spoken about that, and you agree,  
22 that's the Statewide Uniform Registry of Electors  
23 system?

24 A. That's correct, yes.

25 Q. When did Pennsylvania implement the SURE

1 system?

2 A. It was implemented beginning in 2003. It  
3 was actually a two-year transition from county  
4 Legacy system to SURE, that started in 2003 and  
5 ended in December 2005. That's when the last county  
6 came onto the SURE system.

7 Q. Why did Pennsylvania implement the SURE  
8 system?

9 MS. WALSH: Objection to form, and I'll  
10 just note this is straying from the topics that  
11 brought us here today. I'll give you leeway, but I  
12 think you're straying from the specific topics and  
13 the objections that lead in to those topics.

14 Q. You can go ahead and answer.

15 A. It was implemented because it's a  
16 statutory requirement.

17 Q. What statute was the Pennsylvania  
18 Department of State following in implementing that  
19 SURE system?

20 A. The Act 3 of 2002.

21 (Deposition Exhibit No. 5 marked for  
22 identification.)

23 Q. Okay.

24 I'm going to show you Exhibit 5. So we're  
25 going to put that on your screen.

1                   Let me know when you can see that.

2                   Can you see Exhibit 5, Mr. Marks?

3           A.     Yes.

4                   This is -- the header is 52 USCS  
5     Section 21983 -- or it's 21083? I apologize, Ms.  
6     Kerns. My eyesight is not the best.

7           Q.     Okay.

8                   Well, can you read it?

9           A.     I can. I was having trouble with the,  
10    with the blue font, but I can read it.

11          Q.     Okay.

12                  I'm going to point you, then, to Section  
13    small (a) (1) (A) That's right on that page, and  
14    that's in black.

15          A.     I see that, yes.

16          Q.     Can you read what we've just highlighted?

17          A.     I'm looking at a blowup of a downloaded  
18    version, so.

19                  MS. WALSH: I'm sorry. It disappeared.

20                  MS. KERNS: I'm sorry. I think he  
21    highlighted it, and then the highlighting  
22    disappeared. We'll try again.

23                  MS. WALSH: Thank you.

24                  Can you expand that?

25          A.     Is he sharing the screen or --

1 MS. WALSH: We can see a screen. We see  
2 some highlighting. It's too small to read. So if  
3 you can blow that up, that would be helpful.

4 Q. Okay.

5 So we just blew it up.

6 Can you read it now? Or what we  
7 highlighted? Or do you want me to take the  
8 highlighting off?

9 MS. WALSH: Actually, it's hard to see  
10 what that is.

11 The witness was just handed a copy of  
12 Exhibit 5.

13 A. I have a paper copy.

14 So if I'm -- correct me if I'm wrong.  
15 What's being highlighted is 21083 (a)(1) paragraph  
16 (A). It starts with "in general".

17 Q. Right.

18 A. Okay.

19 And, and, and you were highlighting that  
20 entire paragraph?

21 Q. Yes.

22 A. Okay. I have that.

23 Q. And are you familiar with that paragraph?

24 A. I am, yes.

25 Q. Did Pennsylvania implement the SURE system

1 to comply with that paragraph?

2 MS. WALSH: I just note an objection to  
3 the form, to the extent you're calling for a legal  
4 conclusion, and, also, again, you're straying beyond  
5 the topics that brought us here today.

6 A. The -- I mean the short answer is no.  
7 Pennsylvania's law, Act 3 of 2002, was actually  
8 enacted prior to this federal law.

9 Q. What is the SURE system used for?

10 A. Well, it is, it is the -- as its name  
11 implies, it is the uniform registry of electors.  
12 It's a statewide system that counties must maintain  
13 their official voter registration records.

14 Q. Can the Department of State access the  
15 SURE system?

16 A. We do have access to the SURE system, as  
17 part of our responsibility to support and maintain  
18 that system.

19 Q. So does the Department of State use the  
20 SURE system for anything other than supporting and  
21 maintaining the system?

22 MS. WALSH: Objection to form.

23 A. I think that's a fair representation.

24 Q. So what does the Department of State use  
25 the SURE system for?

1           A.    Oh, I'm sorry.  I, I misunderstood.

2                   What I'm saying is it is a fair  
3 representation that we use it to support and  
4 maintain the county's voter registration records.

5           Q.    Can you describe what you mean by "support  
6 and maintain"?

7           A.    Well, we -- I don't have Act 3 in front of  
8 me, but it is a statutory requirement that we  
9 establish a Statewide Uniform Registry of Electors,  
10 and that we maintain it so that counties can,  
11 counties can maintain their official voter  
12 registration records in that statewide system.

13          Q.    So what do the counties use the SURE  
14 system for?

15          A.    They use it to record their official --  
16 the Statewide Uniform Registry Of Electors is  
17 essentially each county's official voter registry.

18          Q.    Can the Department of State access the  
19 same parts of the SURE system that the counties can  
20 access?

21                   MS. WALSH:  Objection to form.

22          A.    I don't know what you mean by "same parts  
23 of the SURE system".

24          Q.    Okay.

25                   I'll rephrase.



1           Are there any records that are maintained  
2 by the SURE system that the counties can access that  
3 the Department of State cannot access?

4           A.    Well, the SURE system is, as I said, the  
5 official registry.

6           The Department does have access necessary  
7 to maintain and support the SURE system. The  
8 records, though, are maintained by the counties in  
9 the SURE system.

10          Q.    Right.

11                So my question is is there any part of the  
12 SURE system that the -- or records in the SURE  
13 system that the counties can access that the  
14 Department of State cannot?

15          A.    The data that's contained in the SURE  
16 system, the Department can access that, that data.

17          Q.    Can the Department of State change any  
18 records in the SURE system?

19          A.    Only with explicit requests from the  
20 county voter registrar.

21          Q.    Okay.

22                My question is not why they would access  
23 it to change it.

24                Does the Department of State have the  
25 ability to change a record, just like a county would

1 have the ability to change a record?

2 MS. WALSH: Objection; asked and answered.

3 A. I -- it, it is theoretically possible for  
4 the Department to change a record, but we do not do  
5 that.

6 Q. Are there any parts of the SURE system  
7 records that the Department of State can access that  
8 an individual county would not be able to access?

9 A. Well, each county has access to its own  
10 records. So even across counties, not every county  
11 user can access all counties' records, but the  
12 Department has access to the SURE infrastructure,  
13 the servers and other things that on which the SURE  
14 system resides that a county wouldn't have access  
15 to.

16 (Deposition Exhibit No. 6 marked for  
17 identification.)

18 Q. Okay.

19 I'm going to now refer to Exhibit No. 6.  
20 This is a 46 page exhibit. It might be tough to  
21 print. We're going to share it on the screen. This  
22 was originally Bates stamped as D1 to D46.

23 Let me know when you see it on your  
24 screen, Mr. Marks.

25 Can you see it on your screen, Mr. Marks?

1 MS. WALSH: We can see a part of the first  
2 page.

3 A. Yeah. I see the cover, The Administration  
4 of Voter Registration in Pennsylvania 2018 Report to  
5 the General Assembly.

6 Q. Have you ever seen this report before,  
7 Mr. Marks?

8 A. I have, yes.

9 Q. And was this a report that was prepared by  
10 the Department of State?

11 A. Yes.

12 Q. Okay.

13 I'm going to direct your attention to page  
14 17 of that report, which is Bates-stamped 20.

15 MS. WALSH: Ms. Kerns, I'm sorry. We were  
16 in the process of printing out a copy. If you could  
17 just bear with us a moment.

18 MS. KERNS: Okay.

19 MS. WALSH: The witness has before him  
20 what's been marked as Exhibit 6.

21 Q. Okay.

22 Great.

23 So if you go to Bates-stamped 20, which is  
24 the -- I think it's the 17th page.

25 A. Seventeen of the report?

1 Yes, I have that.

2 Q. Okay.

3 So I'm going to direct your attention to  
4 the part that it says "SURE Applications" and "SURE  
5 Portals".

6 A. Okay.

7 Q. Is it fair to say that the only  
8 application listed is called the "SURE Voter  
9 Registration" or "SURE VR"?

10 MS. WALSH: Objection to form.

11 A. That's correct.

12 Q. And I'm going to ask you to review just  
13 that one section about the SURE VR where it says,  
14 "The SURE VR application is used by counties to  
15 process and maintain voter registration records and  
16 to perform a number of election-related tasks,  
17 including the management of vote history, absentee  
18 ballots, whole books, election related reports, and  
19 voter registration correspondence to voters".

20 A. That's correct.

21 Q. Can the Department of State access that  
22 application, the SURE VR application?

23 A. Well, the SURE VR is, is essentially  
24 shorthand for the database. So as we discussed, the  
25 Department does have access to SURE for the purposes

1 of supporting and maintaining the system.

2 Q. Can the SURE VR run reports? Like, let's  
3 look at the first election related task, "management  
4 of voter history". Would the Department of State be  
5 able to use this application to run a report on vote  
6 history?

7 A. Yes. The Department of State does  
8 actually provide that information through the Full  
9 Voter Export.

10 Q. Are there any reports that a county can  
11 run on the SURE RV that the Department of State  
12 cannot run?

13 A. The counties can run a variety of reports  
14 through the SURE system.

15 Q. Yeah. But --

16 A. The Department, the Department, again,  
17 theoretically, could do that, but that's a function  
18 that the county is undertaking.

19 Q. When you say "theoretically", I'm just  
20 going to ask you to not speak in theory but in  
21 actuality.

22 Can the Department of State run the same  
23 reports that a county can run?

24 MS. WALSH: Objection to form.

25 A. We could, yes.

1 MS. KERNS: Okay.

2 I'm going to now refer to Exhibit 7.

3 We're going to put that up on the screen.

4 (Deposition Exhibit No. 7 marked for  
5 identification.)

6 BY MS. KERNS:

7 Q. Let me know when you can see it.

8 Can you see that, Mr. Marks?

9 A. Yes. And it has the header 25 Pa. C.S.  
10 Section 1222.

11 Q. Right.

12 So --

13 A. Yes.

14 Q. -- I'm marking this as Exhibit 7. It's  
15 Section 1222 of Title 25 of the Pennsylvania  
16 Consolidated Statutes.

17 And I want to direct your attention to  
18 subsection C where it says "Requirements".

19 Do you see that?

20 A. I do, yes.

21 Q. And the last sentence of that subsection  
22 C, before the No. 1 says, "The SURE system shall, at  
23 a minimum, do all of the following:"

24 Can you see that?

25 A. I can, yes.

1           Q.    And then in No. 5, it indicates, "Permit  
2   each commission and the department to have instant  
3   access to a commission's registration records  
4   maintained on the system."

5           A.    Correct.  Yes.

6           Q.    Where it says "commission and the  
7   department", does "department" refer to the  
8   Department of State?

9           A.    It does, yes.

10          Q.    But you would agree that the Department of  
11   State has access to each commissioner's registration  
12   records maintained in the SURE system?

13          A.    Yes.  For the purpose of supporting the  
14   counties, yes.

15          Q.    Can you describe for me what the term  
16   "voter list maintenance" means?

17          A.    Voter list maintenance is a, is a term of  
18   art used to describe the statutorily-mandated list  
19   maintenance activities or voter removal programs, I  
20   believe is what the statute calls it.

21          Q.    Is the SURE system used to conduct voter  
22   list maintenance?

23          A.    The SURE system is, is used in that it, it  
24   gives the counties the functionality necessary to  
25   generate the notices that must be sent out to

1 voters.

2 Q. What was just put in front of you?

3 A. It's a paper copy of the --

4 Q. The exhibit?

5 A. -- I'm looking at, yes.

6 MR. BRIER: Ms. Kerns, this is Dan Brier.

7 Just so the record is clear, we will not  
8 put anything in front of the witness throughout the  
9 day unless it is an exhibit that you have identified  
10 and required. So what we have in place is a process  
11 where someone is printing them as you are releasing  
12 them, and we will, therefore, have only those  
13 exhibits available to Mr. Marks and nothing else,  
14 but I just don't want there to be a concern that  
15 we're doing something else.

16 MS. KERNS: Yeah. I can't see who I'm  
17 speaking to, but it wasn't necessarily a concern. I  
18 just wanted to ask a question because of something I  
19 saw on the screen.

20 MR. BRIER: And, again, I just want to  
21 make sure that we have an understanding as to the  
22 fact that we're not putting anything in front of him  
23 that you're not publishing and marking.

24 MS. KERNS: Okay.

25 Thank you.



1           Q.     So, Mr. Marks, can you tell me what  
2 particular part or function of the SURE VR system is  
3 used to perform voter list maintenance?

4           MS. WALSH:  Objection to form.

5           A.     Well, I don't, I don't know what you mean  
6 by "particular part".

7                     There are correspondences that can be  
8 generated for a voter or a group of voters necessary  
9 to conduct the statutorily required list maintenance  
10 activities.  So these are system-generated  
11 correspondences that counties would use and then  
12 mail to the appropriate voters.

13          Q.     When you say "correspondence" are you  
14 referring to --

15                    You know what, I'll just ask you to define  
16 it.  What do you mean by -- can you describe what  
17 you mean by "correspondence".

18          A.     These are letters that the statute  
19 actually requires the counties to send to voters.

20          Q.     And just to be clear, when you say  
21 "letters", are they sent by the United States Post  
22 Office?  E-mail?  Fax?

23          A.     I believe -- we don't send the letters,  
24 so, but I believe the letters are sent via the  
25 United States Postal Service.

1 Q. Who sends the letters?

2 A. The county voting registrars.

3 Q. Okay.

4 So when you say "we", you meant the  
5 Department of State?

6 A. Yeah. I, I said we don't send the  
7 letters. The counties send the letters.

8 It's in -- in the same section, you'll  
9 see, too that the system has to preserve the power  
10 of the commissions to make determinations as to the  
11 qualifications of applicants. That is crystal clear  
12 that that's not the Department of State's role.

13 Q. Is the SURE system used to add new voter  
14 registrations?

15 A. In that it is the official voter registry,  
16 yes.

17 Q. And the SURE system, is it also used to  
18 cancel voter registrations?

19 A. It is, yes.

20 Q. And who has the ability to cancel a voter  
21 registration? Is it the Department of State and the  
22 county commissions?

23 A. Just the county commissions.

24 Q. If the Department -- if someone from the  
25 Department of State wanted to cancel a voter

1 registration, would they be able to, through their  
2 access to the SURE system?

3 MS. WALSH: Objection to form.

4 A. If somebody wanted to cancel a record,  
5 yes, and they would have access to do that. Well,  
6 not everyone.

7 I want to be clear -- there -- we very  
8 tightly control who has access to the SURE system,  
9 even at the state.

10 Q. And is that via -- when you say you  
11 "tightly control", do you mean that it depends on  
12 your log in, like one person's log in might be able  
13 to do certain SURE system functions where another  
14 person's log in can do other SURE system functions?

15 MS. WALSH: Objection to form.

16 A. I -- yeah. I don't know what you mean by  
17 "functions", but, again, our, our purpose is to  
18 maintain the system. That requires some level of  
19 access in order to support the system.

20 What we do not have, our state users that  
21 are able to go into a county's records and make  
22 changes, unless that is explicitly requested by the  
23 county.

24 Q. Does the county ever explicitly request  
25 the Department of State to change a voter record?

1 MS. WALSH: Objection to form.

2 A. There are occasions when a county may make  
3 an error and they're requesting support from the  
4 Department to correct the error.

5 Q. Can you give me an example of an error?

6 A. I wasn't really prepared to, you know,  
7 testify about the inner workings of the SURE system  
8 today, but there are occasions where -- you know,  
9 the system is designed in such a way to allow -- to  
10 enable counties to do all of those  
11 statutorily-mandated duties. On occasion, a user  
12 will make an error that will have an adverse impact,  
13 perhaps, upon on an individual voter record, and it  
14 is something they may need support from the  
15 Department of State to correct.

16 Q. So does the SURE system contain the  
17 complete voter registration file and voter record  
18 for the voter? Or are those files kept in places  
19 other than the SURE system?

20 MS. WALSH: Objection to form.

21 A. The SURE system is the official registry.  
22 So it is, it is the voter rolls for every county in  
23 the Commonwealth.

24 So the date that it is entered into the  
25 SURE system is indicative of the official voter

1 registration rolls of the Commonwealth.

2 Q. If, if, if a county commission wanted to  
3 see a copy of, say, the completed registration  
4 application of the voter, could you find a copy of  
5 that in the SURE system, if the voter filled out a  
6 paper application?

7 A. No.

8 MS. WALSH: I'm going to note an objection  
9 to the form. We're getting far afield of the topics  
10 that brought us here today. The witness is prepared  
11 to testify about the topics that we've agreed to  
12 over our objection. I think your questions are very  
13 far afield. I encourage you to remain consistent  
14 with the notice and the topics you've identified in  
15 our objections.

16 MS. KERNS: Well, I'm pretty confident I  
17 am sticking with that.

18 MS. WALSH: Well, can you enlighten me,  
19 then, as to which paragraph of the notice this area  
20 of questioning lead to?

21 MS. KERNS: Do you want me to go back and  
22 do that now? Or do you want me to just keep  
23 questioning, because we have a lot to get through?

24 MS. WALSH: Well, I encourage you to  
25 remain consistent with the notice that brought us

1 here today, and in our objections, we identified the  
2 topics the witness would testify about.

3 I've given you leeway, but, again, I  
4 encourage you to the --

5 MS. KERNS: Okay. Well, we'll just have  
6 to agree to disagree.

7 Q. The copies of correspondence that you  
8 talked about, Mr. Marks, that were sent out by the  
9 counties, are they stored in the SURE system?

10 A. No.

11 MS. WALSH: Objection to form.

12 A. I want to -- if it's helpful, I want to be  
13 clear. The statewide registry is the official voter  
14 rolls of the Commonwealth. Any documentation that a  
15 county receives that they use to enter information  
16 into the SURE system is maintained by the counties.

17 Q. Is voting history stored in the SURE  
18 system?

19 A. Well, voting history is data, so, yes.

20 Q. And when a voter's record is updated, is  
21 there a log as to when those changes are made in the  
22 SURE system?

23 MS. WALSH: Objection to form.

24 A. Yes. Each, each, each voter record has a,  
25 a log that shows changes that are made to the

1 voter's record over time.

2 Q. And does the SURE system keep track of the  
3 date that a change was made?

4 A. It does, yes.

5 Q. Now, with regard to canceling a voter  
6 registration, can you give me some reasons why a  
7 voter's registration would be canceled?

8 MS. WALSH: Objection to form, also to the  
9 extent you're calling for a legal conclusion.

10 A. A voter's registration record can be  
11 canceled upon request from the voter. It can be  
12 canceled after a certain period of time, if a voter  
13 receives a voter list maintenance notification and  
14 does not reply to it or does not otherwise update  
15 their voter record, they can ultimately be canceled  
16 after a period of two federal General Elections.

17 Q. Those, those reasons that you just  
18 mentioned, would that be recorded in the SURE system  
19 if and when a voter registration was canceled, the  
20 reason for the cancelation?

21 A. It would, yes.

22 Q. And would a registration be canceled if an  
23 election official determined that the voter was not  
24 a United States citizen?

25 A. If a, if a county determined that a

1 voter's record needed to be canceled, and the county  
2 took that action to cancel the voter record, that  
3 would be captured in the SURE system, yes.

4 Q. Okay.

5 But my question was if an election  
6 official determined that a voter was not a United  
7 States citizen, would the registration be canceled?

8 MS. WALSH: Objection; asked and answered.

9 A. And my expectation is if the county made  
10 that determination, they, they would cancel the  
11 record, yes. I mean that would be a question you  
12 would have to ask an individual county, but --

13 Q. Well, are you aware of any voter  
14 registrations that have been canceled because  
15 election officials determined that the voter was not  
16 a United States citizen?

17 A. I'm aware of voter registration records  
18 that have been canceled, and the county has used the  
19 status "non-citizen" as the reason for cancelation.

20 Q. When you say "reason for cancelation", you  
21 mean the reason that's coded into the SURE system?

22 A. Yes. That's entered into the SURE system  
23 by the county election official.

24 Q. So would there be any reason to enter that  
25 status "not a citizen", other than if the election



1 official determined that the voter was not a  
2 citizen?

3 MS. WALSH: Objection to form.

4 A. I would expect that if the county selected  
5 that reason, they have done some -- made some effort  
6 to confirm that.

7 Q. Well, you say you expect.

8 In your role at the Department of State,  
9 maintaining and supporting, do you ever do any  
10 follow up on this issue, if you learn that records  
11 are canceled based on the descriptor "canceled not a  
12 citizen"?

13 MS. WALSH: Objection to form.

14 A. I'm not sure what you mean by "follow up".  
15 I mean a county has made the determination as the  
16 record, as -- I mean, yeah. That's very clear in  
17 the statute, that the SURE system preserves the  
18 power of the commissions to make determinations as  
19 of the qualifications of applicants. So if a county  
20 takes an action to cancel a voter registration  
21 record, it is expected that the county had cause to  
22 do so.

23 Q. Does the Department of State ever monitor  
24 that to make sure that the cause was correct?

25 A. We don't have access to original records.

1 We -- again, we are maintaining the SURE system.  
2 It's the voter registrars that are responsible for  
3 maintaining the official records in the SURE system.

4 Q. What responsibility does the Department of  
5 State have to make sure that those counties are  
6 performing their duties correctly?

7 MS. WALSH: Objection to form.

8 A. Well, the Department of State it -- its  
9 duty is to support the counties' efforts through  
10 the, through the SURE system. So the Department  
11 provides not only access to the SURE system but also  
12 job aids, guidance as necessary to remind counties  
13 of their, of their statutory duties.

14 (Deposition Exhibit No. 8 marked for  
15 identification.)

16 Q. I'm going to show you Exhibit 8. We're  
17 going to put that on your screen.

18 Let me know when you can see that,  
19 Mr. Marks.

20 Can you see that, Mr. Marks?

21 A. I can see it. I can, yes.

22 Q. Okay.

23 This is -- for the record, Exhibit 8 is  
24 Docket Entry 1-6. It was Exhibit E to Plaintiff's  
25 complaint. It was also produced in discovery,

1 Bates-stamped PILF 168 through 174. And these are  
2 records that my client, the Public Interest Legal  
3 Foundation, received from Allegheny County.

4 And I'm going to show you -- I'm going to  
5 move the screen to page 6, which is Bates-stamped  
6 No. 173.

7 Can you see that, Mr. Marks?

8 A. Working on it. Is that it.

9 MS. WALSH: Yeah.

10 A. I can, yes.

11 Q. Okay.

12 In looking at that, can you, can you tell  
13 me what that is?

14 A. It appears to be a screen shot or a  
15 photocopy of a screen shot of the, of the voters --  
16 voter record.

17 Q. Is this from the SURE system?

18 A. Yes.

19 Q. So specifically, is this from the SURE VR?

20 A. Yes.

21 Q. And would the Department of State be able  
22 to access this record?

23 MS. WALSH: Objection to form.

24 A. It's possible for us to, to access voter  
25 records, yes.

1 Q. And the county could also access -- the  
2 county official could also access this record  
3 through the SURE system; correct?

4 A. Correct.

5 Q. Is there, is there any type of official  
6 name for this, this screen on the SURE system?

7 MS. WALSH: Let the record show that the  
8 witness was just handed a copy of what has been  
9 marked as Exhibit 8.

10 Q. I'll let you go to that number, that page.  
11 It's -- let me know when you have it in  
12 front of you.

13 At the bottom, it's 173, but it was  
14 like --

15 A. Okay. It looks like something --

16 Q. Yeah.

17 A. I have it.

18 Q. Okay.

19 So what -- who is the voter? What is the  
20 voter's name for this voter record?

21 A. I believe -- it appears that the voter's  
22 name is Felipe Rojas-Orta.

23 Q. When you say "it appears". Could it be  
24 any other voter's record?

25 A. No. I'm, I'm looking at the name on the

1 screen shot.

2 Q. Okay.

3 Now, I'm going to ask you to go to the  
4 next page, which is Bates stamped 174.

5 A. Okay.

6 I have it.

7 Q. Now, this appears to be a handwritten note  
8 from Mr. Felipe Rojas-Orta. And it says, "I wish to  
9 cancel my voter registration because I am not a  
10 citizen."

11 Do you see that?

12 A. I do, yes.

13 Q. Okay.

14 Now, I'm going to ask you to go back to  
15 the previous page with the voter record. At the top  
16 or near the top, there's a "status reason" section.

17 A. Yes. Near the top on the right.

18 Q. Yes.

19 Can you tell me what that field means  
20 "status reason"?

21 A. Yes. It says "cancel - not a citizen".

22 Q. And does "status reason", would that only  
23 be where it's recorded why someone is canceled?

24 MS. WALSH: Objection to form.

25 A. Well, the purpose of the "status reason"

1 field is to identify the status of the, of the  
2 record.

3 So in this case, the record was canceled  
4 for that specific reason.

5 Q. And so what was the reason this person's  
6 record was canceled?

7 A. Well, according to the screen shot, it was  
8 canceled for the reason "cancel - not a citizen".

9 Q. Now, who would have entered -- and I don't  
10 mean by the official -- the person's name, but what,  
11 what, what is the job title of the person who would  
12 have entered that "status reason" into the SURE  
13 system?

14 MS. WALSH: Objection to form.

15 A. I, I don't know what the job title of the  
16 person would have been.

17 Q. Okay.

18 Now, let me back up.

19 Would it be somebody at the county level  
20 or someone from the Department of State?

21 A. It would be someone at the county level.

22 Q. And who would make the decision to  
23 classify a "status reason" as "cancel - not a  
24 citizen"?

25 A. A county official.

1 Q. Now, what if there was, like, more than  
2 one reason to cancel a record, who would make the  
3 decision how to classify that?

4 A. The county official would.

5 Q. Can the SURE system on a -- can you use --  
6 when I say "you", can a user utilize the SURE system  
7 to run a report of all registrations that were  
8 canceled for a specific status reason?

9 A. I, I don't know for sure. Again, I was  
10 not prepared to talk in great detail about how the  
11 SURE system works. There are a variety of reports.  
12 I don't recall off the top of my head if, if that  
13 specific report could be run by a county.

14 Q. Can it be run by the Department of State?

15 A. I -- I guess what I'm trying to tell you  
16 is I don't know if there's a specific report like  
17 that.

18 Q. If you needed to know the answer to that  
19 question, would you be able to get the answer to  
20 that question?

21 MS. WALSH: Objection to form.

22 A. I, I could. I would, I would have to  
23 review the user documentation of the SURE system.

24 Q. Do you know, do you know what reports can  
25 be run from the SURE system?

1           A.    I don't -- I -- there's a variety.  There  
2   are dozens of reports that can be run from the SURE  
3   system.  I don't have them memorized.

4           Q.    Okay.

5                    So just so we're clear, you know the  
6   reports can be run, but as we sit here today, you're  
7   not sure if you could run a report on everyone whose  
8   "status reason" was, say, "cancel - not a citizen",  
9   like Mr. Felipe Rojas-Orta?

10          A.    Yeah.  I, I would have to confirm that.

11          Q.    Can you make a -- can you generate a  
12   report of, say, the date a voter last voted?

13          A.    Well, again, that is, that is contained in  
14   the Full Voter Export that the Department publishes  
15   and provides on a weekly basis; so, yes.

16          Q.    Are you talking about the Export that just  
17   the public can buy?

18          A.    That's correct.

19          Q.    I think that cost is, like, \$20 or  
20   something?

21          A.    That's right, yes.

22          Q.    So in that Export, is the "status reason"  
23   in that report?

24          A.    It is -- that report, that report has only  
25   active and inactive records, valid records in it.



1 So I don't believe that the -- and, again, this is  
2 published on our Web site, so it's public  
3 information.

4 Q. So you, so you do not know the answers to  
5 whether or not you could run a report based on --  
6 and I just want to make clear before I move on.

7 You do not know the answers to whether or  
8 not you could use the SURE system or a user could  
9 use the SURE system to run a report on that "status"  
10 field?

11 A. Yeah. What I'm, what I'm telling you is I  
12 don't recall all of the various reports. The  
13 counties can run reports. I just -- I want to  
14 answer your question, but I don't have the list of  
15 reports memorized. So I don't know if they can run  
16 a specific report to that effect.

17 (Deposition Exhibit No. 9 marked for  
18 identification.)

19 Q. Okay.

20 I'm going now to put up Exhibit 9 on your  
21 screen. Let me know when you can see it.

22 Can you see Exhibit 9 on your screen,  
23 Mr. Marks?

24 A. We're working on it.

25 Q. Okay.

1 MS. WALSH: Is this a multipage document?

2 MS. KERNS: This is not. This is only a  
3 few pages. This is -- these are records my client  
4 received from Allegheny County. They were  
5 Bates-stamped PILF 897 through 901.

6 Q. And up on the screen, I originally had the  
7 first page and then -- I'm paging through now.

8 Now I'm back to the first page.

9 Can you see it?

10 A. I can, yes.

11 Q. So I have in front of you Exhibit 9. Like  
12 I said, I received from -- my client received from  
13 Allegheny County.

14 Have you -- do you know what that page is  
15 showing? That first page?

16 A. It appears to be a screen shot of the  
17 "Reports Menu" from the SURE system.

18 Q. Have you ever screen used -- excuse me.

19 Have you ever seen this screen before?  
20 Not this particular screen shot. I just mean this  
21 screen "Reports Menu"?

22 A. I have, yes.

23 Q. Have you yourself, meaning, you,  
24 Mr. Marks, ever used this report screen?

25 A. I don't recall that I ever have, no.

1 MS. WALSH: Let the record reflect the  
2 witness has before him what's been marked as  
3 Exhibit 9.

4 MS. KERNS: Okay. Great.  
5 Thank you.

6 Q. Now, is this "Reports Menu" a part of a  
7 SURE system?

8 A. Yes. The "Reports Menu" is a function of  
9 the SURE system, yes.

10 Q. And is this part of the SURE VR?

11 A. Yes.

12 If it helps, we can establish the SURE  
13 system, SURE VR are one in the same.

14 Q. So we can interchangeably say "SURE VR"  
15 and "SURE system", and it's the exact same thing?

16 A. Correct. Yes.

17 Q. So I'm going to give you a chance to look  
18 at that.

19 Can you tell me, by looking at that screen  
20 shot, what report was being run?

21 MS. WALSH: Objection to form.

22 A. I can tell that, that the user selected  
23 the report item "voter status reason" and provided  
24 the criteria "cancel - not a C" -- I can't see  
25 obviously the rest of it, but -- so the user was

1 running a report on "Voter Status Reason" and  
2 provided the specific criteria for that report.

3 Q. With regard to that reason, "cancel - not  
4 a C", I realize that it's cut off.

5 Do you know of any of other reasons that  
6 would start with "cancel - not a C" other than  
7 "cancel - not a citizen"?

8 A. I don't, I don't know that there are any  
9 others, no.

10 Q. And there's a -- it says "Date Status  
11 Change" and then it says "Starting With". Can you  
12 explain to me what that would do to the report by  
13 entering that "Date Status Change" in there?

14 A. Yes. It would, it would provide a --  
15 "Starting With" would be the -- you'd be looking for  
16 records from that date forward.

17 Q. And then at the -- near the bottom of the  
18 screen, it says "Report Name: Voter Listing with  
19 Status".

20 Do you know what that means?

21 A. Yeah.

22 Q. Do you know what "Voter Listing with  
23 Status" next to the "Report Name"?

24 A. Well, I believe that's the name of the  
25 report.

1 Q. Okay.

2 So I'm going to go to the next page of  
3 this exhibit.

4 Do you have that in front of you? It's  
5 Bates-stamped at the bottom.

6 A. 898.

7 Q. Yeah.

8 A. Yes, I have that.

9 Q. Do you know what that is?

10 A. It appears to be the first page of a  
11 "Voter Listing with Status" report.

12 Q. Okay.

13 Under the words "Voter Listing with  
14 Status", it says, "Date Status Change from (D) From  
15 01/01/2006 To 12/31/99999 AND Federal Voter (Y) is 0  
16 AND Voter Status Reason (T) is XNC."

17 Do you know what those words mean up at  
18 the top of that page?

19 A. The "Date Status Change" relates back to  
20 the page we just looked at where it's identifying  
21 the criteria used when running the report. So "Date  
22 From" would be 1/1/2006.

23 Q. Have you ever seen this particular report?

24 A. This specific report, no.

25 Q. Have you ever seen a report run by the

1 SURE system using criteria -- not necessarily this  
2 criteria -- but other criteria?

3 A. Yes. I've, I've seen reports run using  
4 the SURE system.

5 Q. Okay.

6 So would it be fair to say that this is  
7 the report that would be run using the criteria that  
8 we saw in the previous page, the first page?

9 MS. WALSH: Objection to form.

10 A. It does appear to be, yes.

11 Q. And at the top right-hand corner, it says  
12 "XNC" as "Voter Status Reason".

13 A. Yes.

14 Q. Do you see that?

15 A. I do, yes.

16 Q. What does "XNC" mean?

17 A. "X" is "canceled"; "NC" is "not a  
18 citizen", and you'll, you'll see that under each  
19 name on the list.

20 Q. Okay.

21 So you would agree that these were -- this  
22 is a list of voters whose registrations were  
23 canceled because they were not citizens?

24 MS. WALSH: Objection to form.

25 A. I would agree that, yes, this is a list of

1 voters whose registration records were canceled for  
2 the reason "not a citizen".

3 Q. So would you agree that prior to these  
4 registrants being canceled, these voters were on the  
5 voter rolls in Pennsylvania?

6 MS. WALSH: Objection to form. My  
7 objection is simply this is a document that you  
8 produced that the witness hadn't seen prior to  
9 today.

10 A. Yes. That is -- you can reasonably make  
11 that assumption from, from this report.

12 Q. Thank you.

13 Now I'm going to put up Exhibit 10 up on  
14 your screen. This is a, this is a five page  
15 exhibit.

16 (Deposition Exhibit No. 10 marked for  
17 identification.)

18 Q. Let me know when you can see that,  
19 Mr. Marks. "Voter Listing with Dates" title.

20 A. Is that the document?

21 Q. Yes.

22 A. So this is records my client, the Public  
23 Interest Legal Foundation, produced in discovery.  
24 They're Bates-stamped 32 through 37.

25 Q. And you would agree that this is

1 Philadelphia County?

2 A. Yes. It appears to be in the top left  
3 corner identifying that it's a report generated by  
4 Philadelphia County.

5 Q. Okay.

6 Now, at the top right-hand corner, there's  
7 the -- it says "XNC".

8 And would you agree that this still means  
9 "canceled - not a citizen" on this report?

10 A. I don't have the benefit of the, of the  
11 "Report Menu" as on the last one, but it is  
12 consistent with that, indicating that the user  
13 selected as a criteria, as a criteria the "Status  
14 Reason, cancel - not a citizen".

15 Q. Now, on this report under "Voter Address",  
16 in addition to their street address, there's another  
17 indication.

18 For example, if we go to the first voter  
19 on the list, last name -- it's hard to pronounce,  
20 Atoulelou Essohouna. And it says "Voter Address",  
21 starting with "567", and then it says "Dates: Last  
22 Voted".

23 Do you know what that entry means "Dates:  
24 Last Voted", with the date of November 2, 2010?

25 A. I believe it is -- as the name implies,



1 that it is the date that vote history was last  
2 recorded for this voter record.

3 Q. So on that list -- and now we're  
4 looking -- you would agree that this is the -- a  
5 list that was run for -- based on the criteria at  
6 the top, "January 1, 2013 to December 31, 2013",  
7 that this was the list of voters who were canceled  
8 because they were not citizens.

9 Do you agree with that?

10 MS. WALSH: Objection to form.

11 A. I -- they were -- it appears it is a list  
12 of voters whose records were canceled for the reason  
13 "not a citizen".

14 Q. And you would agree that some of the names  
15 on this list indicated that prior to being canceled,  
16 these voters voted in an election?

17 MS. WALSH: Objection to form.

18 A. It would indicate, as we just discussed,  
19 if it shows a date last voted, it would indicate  
20 that the voter's record was -- had "vote history"  
21 recorded on it.

22 Q. Would there be any reason that a vote  
23 history would be recorded, other than that voter  
24 voted?

25 A. It would be necessary to confirm with the

1 county, but if, if it was entered correctly, no.

2 Q. So you would agree that Philadelphia  
3 County has records of non-citizens who voted?

4 MS. WALSH: Objection to form.

5 A. I would agree, from looking at this  
6 report, that there were voter records canceled for  
7 the reason "not a citizen" that have vote history on  
8 them indicating they may have voted.

9 Q. Based on this report, would you agree that  
10 the SURE system gives an option to generate a report  
11 of voters who were canceled for "reason" of not  
12 being a citizen with the inclusion of when they last  
13 voted --

14 MS. WALSH: Objection.

15 Q. -- if they voted?

16 MS. WALSH: I apologize.

17 Objection to form.

18 A. Yes. I, I, I don't know whether it's  
19 contained all in one report. You showed two  
20 different reports here, but certainly, it  
21 demonstrated that there are reports available that  
22 the county could use to generate a list of canceled  
23 voters who were canceled for the reason "not a  
24 citizen" and could also provide this information  
25 here that shows dates on that voter's record.

1           Q.     So for the one that's in front of you on  
2     the screen -- and it's the first page of the  
3     exhibit, this report was -- because of the "Date  
4     Status Change" at the top, was this report people  
5     whose status changed between January 1, 2013 and  
6     December 31 of 2013?

7           MS. WALSH:  Objection to form.

8           A.     I'd have to review the whole report to  
9     confirm that, but that is the criteria that was  
10    selected for running the report.

11          Q.     Okay.

12                 So if we go to the next page of the  
13    exhibit -- sorry, the third page that's  
14    Bates-stamped PILF 34.

15           MS. WALSH:  Ms. Kerns, the witness has a  
16    paper copy of Exhibit 10.

17          Q.     Okay.

18                 So it would be the third page of the paper  
19    copy.

20                 Is it fair to say that those -- that page  
21    is voters whose statuses were changed between  
22    January 1, 2014 and December 31, 2014?

23           MS. WALSH:  Do you mind giving us a Bates  
24    number or the page that you're looking at?

25           MS. KERNS:  PILF 34.

1 MS. WALSH: Thank you.

2 A. Yes.

3 Q. And then the next -- if you go to PILF  
4 Bates-stamped F36, would you agree that that page is  
5 voters whose status changed in the system from  
6 January 1, 2015 though January -- excuse me,  
7 December 31st, 2015?

8 A. I can't, I can't confirm that, looking  
9 at -- I notice that the last changed date on some of  
10 these records pre-date 2015. For example, the first  
11 one.

12 Q. Do you know why Philadelphia would have  
13 ran this report?

14 A. I don't, no.

15 Q. Does the SURE system record what method  
16 the voter registered? Like, for example, if they  
17 filled out a paper and mailed it in? Or showed up  
18 at the office to register? Or registered through  
19 the DMV?

20 A. It does enable the counties to capture the  
21 "source" code of the application.

22 Q. And do the counties routinely do that?

23 A. Yes.

24 MS. KERNS: All right. Now, I'm going to  
25 put Exhibit 11 up on the screen.

1 THE WITNESS: Can we take a break?

2 MS. WALSH: Sure.

3 Ms. Kerns, would this be a convenient time  
4 to take a five minute break?

5 MS. KERNS: Sure. Yeah.

6 We did not put that on the screen, so  
7 sure, yeah. And then just come back and let me  
8 know.

9 MS. WALSH: Okay. Thank you.

10 THE WITNESS: Thank you.

11 (Whereupon, there was a recess in  
12 proceedings.)

13 (Deposition Exhibit No. 11 marked for  
14 identification.)

15 Q. All right.

16 So we're going to move on now to the next  
17 exhibit, Exhibit 11.

18 This is an 11 page exhibit.

19 Mr. Marks, let me know when you can see it  
20 on the screen.

21 A. Okay.

22 I can see it. This is a letter dated  
23 April 12th, 2016 to Shawna Powell.

24 Q. Yes.

25 So I'm marking this as Exhibit 11. It is

1 Bates-stamped PILF 11 through 21. It's a letter to  
2 Mrs. Shawna Powell of the Public Interest Legal  
3 Foundation. And the letter is signed by Pedro  
4 Cortés, Secretary of State.

5 When was Pedro Cortés the Secretary of  
6 State of Pennsylvania?

7 A. Well, he was twice the Secretary of State.  
8 First back -- and I don't recall the exact dates  
9 during the Rendell administration and then at the  
10 beginning of the Wolf administration. So I believe  
11 2015 through his departure in either 2017 or early  
12 2018.

13 Q. So the first page is, you would agree, is  
14 a cover letter from Pedro Cortés to Ms. Powell of  
15 the Public Interest Legal Foundation?

16 A. Yes.

17 Q. And the first report, which is the second  
18 page of that exhibit, we'll move to that.

19 I'm sorry. I apologize.

20 There's two cover letters, one cover  
21 letter dated April 12th, 2016 and then a second  
22 cover letter. And then right after the cover  
23 letters, there's a report titled "Voter Registration  
24 Total Since 2014".

25 Does that document look familiar to you?

1 Have you ever seen anything like that?

2 A. I'm sorry. We're scrolling through here  
3 still.

4 MS. WALSH: Are you referring to a  
5 particular page or the entire compilation?

6 MS. KERNS: I'll start with PILF 00015.

7 A. Okay.

8 MS. WALSH: Just so we're clear, since  
9 we're looking at it on the screen, is that a chart  
10 with a header "Voter Registration Totals Since  
11 2014"?

12 Q. Yes. At the top it says "Voter  
13 Registration Totals Since 2014". It's Bates-stamped  
14 PILF 0015.

15 Can you see that, Mr. Marks?

16 A. I can, yes.

17 Q. Does that document look familiar to you?

18 A. It does, yes.

19 Q. So can you tell me what it is?

20 A. It's a summary of active voter  
21 registrations as of those -- you'll see that each  
22 column of the list has a date associated with it.  
23 So it would be the, the number of the active  
24 registrations in each of those six counties as of  
25 that date.

1           Q.    And do you know where or how this report  
2 was generated?

3           A.    It would have been the first two  
4 columns -- well, actually, all four columns are  
5 publicly available information.

6                    So the first two appear to be the  
7 certified active registrations prior to each of  
8 those November elections.

9                    And then the second two columns would be,  
10 we report on a weekly basis, the total number of  
11 registered voters and other voter registration  
12 information that's published on our Web site. It's  
13 a spreadsheet. And it appears that those totals  
14 were pulled from that weekly spreadsheet as of a  
15 specific date during 2016.

16          Q.    Does this data come from the SURE system?

17          A.    It -- yes, it does. The data that's  
18 published on our Web site is pulled from the SURE  
19 system.

20          Q.    Are there any other sources for this type  
21 of data other than the SURE system?

22          A.    No. As I said, the first two columns are  
23 active and inactive registrations. And they, they  
24 appear to be the certified totals for the  
25 November 2015 election. So those would have been



1 the totals certified in the SURE system by those six  
2 county election offices.

3 Q. Now, I'm going to move to the next page,  
4 which is Bates-stamped PILF 16.

5 Can you see that?

6 It starts "Canceled Records By Types Since  
7 2014".

8 A. Yes, I can see that.

9 Q. So this particular page, Bates-stamped 16,  
10 has -- are those different reasons for cancelation,  
11 those headings where it says "Cancel - Five-year  
12 Voter Removal Program, Cancel Canvass, Cancel Not  
13 Qualified"?

14 A. Yes.

15 Q. All right.

16 So I'm going to move down to Bates-stamped  
17 PILF 18.

18 Can you see that in front of you? It  
19 says, "Canceled Records By Types Since 2014". And  
20 the first heading after -- the first column after  
21 "County Name" is a "Department of Health Death  
22 Notification".

23 A. Yes, I can see that.

24 Q. And then the second to last column says  
25 "cancel - not a citizen".

1           Have you ever seen a report like this  
2 prior to today?

3           A.    I'm sorry.  I'm just going across the  
4 different columns.

5                   It was an analysis.

6                   All right.

7           Q.    So the question was have you ever seen a  
8 report like this prior to today?

9           A.    I have not, no.

10          Q.    Now, this report, on the first column, it  
11 lists six different counties.  So would it be fair  
12 to say that this report was generated by the  
13 Department of State?  Or did one of these counties  
14 generate this report?

15                   MS. WALSH:  Objection to form.

16          A.    I don't, I don't know.  The -- most, if  
17 not all of this data is in the annual report  
18 published for the General Assembly.

19          Q.    And is the source of this data the SURE  
20 system?

21          A.    Yes.

22          Q.    To your knowledge, can the Department of  
23 State run a similar report today using the SURE  
24 system, maybe using a different date?

25          A.    We could provide the statistics for each

1 of these categories, yes.

2 Q. When you say "statistics", do you mean the  
3 number of registrations "cancel" --

4 A. Correct.

5 Q. -- "not a citizen"?

6 A. Correct.

7 Q. Now, we already saw a report from  
8 Allegheny County where it indicated "Date: Last  
9 Voted".

10 Could a report also be run, similar to  
11 Exhibit 11, showing whether or not the registrants  
12 who were canceled for not being a citizen had voted  
13 prior to being canceled?

14 MS. WALSH: Objection to form.

15 A. Yes. And the county could run -- as  
16 Allegheny County did and Philadelphia did, could run  
17 a similar report that a list of voter records that  
18 you were canceled for the reason "not a citizen".

19 Q. And could that report also include whether  
20 or not those voters had voted?

21 MS. WALSH: Objection to the form. The  
22 record will show that the witness has a paper copy  
23 of Exhibit 11.

24 MS. KERNS: Thank you.

25 A. Yes. The county could run a report that

1 would show that, of those canceled records, which  
2 one had vote history recorded on that record.

3 Q. Could the Department of State also run  
4 this report from the SURE system?

5 MS. WALSH: Objection to form.

6 A. It is possible for a user at the  
7 Department of State to run the reports that you  
8 showed me earlier from Allegheny and Philadelphia  
9 County.

10 Q. Do you know if the Department of State  
11 ever runs those types of reports?

12 A. I -- other than during testing, no.

13 Q. And we looked at the -- and you have it in  
14 front of you, this exhibit, Exhibit 11. This report  
15 was produced with the cover letter from Pedro  
16 Cortés.

17 Would you agree with that?

18 A. Sorry. I'm looking at the letter.  
19 It's -- I don't know that I'd characterize what's  
20 attached to this as a report, at least comparable to  
21 what we looked at earlier.

22 Q. Okay.

23 Well --

24 A. This is a summary of data, would be how I  
25 would characterize it.

1 Q. Then would you agree that that was  
2 produced, that summary of data, Bates-stamped PILF  
3 15 through 21, with those cover letters by Pedro  
4 Cortés of the Department of State?

5 A. Yes. I'm just looking at the list on the  
6 first page to confirm.

7 Yes.

8 Q. Would you agree that at that point in  
9 time, the Department of State had records showing  
10 that non-citizens were registered voters on the  
11 Pennsylvania voter rolls at some point?

12 MS. WALSH: Objection to form.

13 A. I would agree that the Department of State  
14 provided data, as described on this first cover  
15 letter, regarding certified voter registration  
16 totals as well as statistical information regarding  
17 canceled voters in each of those six counties.

18 Q. What do you mean by "statistical  
19 information"?

20 A. Well, I mean what's attached are  
21 statistics. They're numbers. They're data.

22 Q. Well, if we go to PILF -- Bates-stamped  
23 PILF 18, wouldn't you agree that those numbers under  
24 the heading "cancel - not a citizen" represent  
25 actual voters -- voter registrants?

1           A.     They represent voter records that the  
2     number of voter records that were canceled for the  
3     reason "not a citizen" in each of those six  
4     counties.

5           Q.     Is there any other reason that a voter  
6     record would be coded as "canceled -- not a  
7     citizen", other than the voter not being -- the  
8     voter registrant not being a citizen?

9           MS. WALSH:   Objection to form.

10          A.     If it was done properly, as not an error,  
11     that's correct.

12          Q.     Do you have any reason to believe that any  
13     of the people -- any of the voter registrants who  
14     were canceled due to the heading "not a citizen"  
15     were canceled in error?

16          A.     I wouldn't have firsthand knowledge of  
17     that.   That would be something the county would have  
18     to review.

19          Q.     Well, do you have any secondhand knowledge  
20     of that?

21          A.     What I'm saying is I wouldn't be in a  
22     position to know whether it was done in error or  
23     not.   The county would.

24          Q.     Do you have any reason to believe that any  
25     of these were done in error?

1           A.    I don't, no.

2           Q.    And if you had reason to believe that  
3 voter registrants were canceled under the category  
4 "not a citizen" in error, would that be something  
5 that the Department of State would investigate?

6           A.    Well, again, that's something the  
7 county -- only the county could investigate.

8           Q.    Is that -- is the Department of State  
9 concerned that voter registrants are being canceled  
10 under the category "not a citizen" when, in fact,  
11 they are citizens?

12          A.    One in -- we are certainly concerned with  
13 the accuracy of, of voter records, but what I'm  
14 telling you -- you're asking me to look at data and  
15 make determination about individual records. I  
16 can't do that. Nor could you.

17                That's -- those records are the counties'  
18 records, is what I'm trying to tell you.

19                The, the expectation is this data is  
20 accurate. I'm not in a position to validate that.  
21 The county is, though.

22          Q.    Are you aware of any instances where a  
23 voter registrant was canceled under the category of  
24 "not a citizen", and it was later determined that  
25 that was an error?

1           A.    I'm not aware of any specific instance,  
2   no.

3           Q.    In the past few minutes, we've looked at a  
4   report from Philadelphia County and Allegheny  
5   County, and they were Exhibits 8, 9 and 10.

6                    So can the SURE system be used to run or  
7   generate a non-citizen cancelation report for all of  
8   the counties in the Commonwealth?

9           A.    Each, each county has the ability to run,  
10   so it would be 67 individual reports.

11          Q.    So one report cannot be run that covers  
12   the entire Commonwealth?

13                   Is that your answer?

14          A.    I'm not aware that, that a single user can  
15   run these reports at a statewide level.

16          Q.    But you would agree that 67 separate  
17   reports could be run with --

18          A.    Yeah. Each county could run a report and  
19   report out on its own records, yes.

20          Q.    And whether or not the Department of State  
21   has actually run that type of report, you would  
22   agree that the Department of State would have the  
23   ability to also run those reports?

24          A.    It is possible for a user at the  
25   Department of State to, to run these reports.



1           Q.    I just want to be clear on this, what the  
2           counties can do.

3                    If I were to try to register to vote in  
4           Philadelphia County, say, today, would the person at  
5           the Philadelphia registrar's office, when they input  
6           my name, would they be able to tell if I was  
7           registered anywhere else in the state? Or is that  
8           data not available to them?

9           A.    That data is. There's a duplicate search,  
10           but counties cannot go in and alter each other's  
11           records, and counties cannot go in and run reports  
12           on other county's records.

13           Q.    Oh, okay.

14                    I understand now.

15                    So they might be able to find information,  
16           but they can't necessarily -- Philadelphia can't  
17           necessarily run a report on what Montgomery County  
18           is doing?

19           A.    Correct.

20           Q.    Or vice versa.

21                    I understand.

22                    I want to go back to Exhibit 6 now. I  
23           think, I think you printed that out.

24           A.    Yes.

25           Q.    That was the document titled "The

1 Administration of Voter Registration," and I'm going  
2 to --

3 A. Yes.

4 Q. -- ask you to go to Bates-stamped 40,  
5 D00040. At the bottom of that -- at the top of it,  
6 it says "Commonwealth of Pennsylvania, Voter  
7 Registration, List Maintenance Activities,"  
8 "Cancellation of Voter Registration 2018",  
9 Bates-stamped D40.

10 Can you see that?

11 A. I can, yes.

12 Q. Now, that is a chart.

13 Do you know how that chart was generated?

14 A. Yes. That -- this is data that was  
15 certified by the 67 county Boards of Elections to  
16 the Department of State.

17 Q. When you say "certified", how does the  
18 county get the data?

19 A. So at the end of each calendar year, the  
20 Department essentially extracts the statistics from  
21 the system and then provides that to the counties,  
22 and requesting that the counties verify the accuracy  
23 of the information of the data, and then certify to  
24 us that the -- you know, whether it's accurate or if  
25 it's not, make corrections to it, and then certify

1 to us the totals that are used to provide the data  
2 that's contained in this annual report.

3 Q. So when you say "the Department of State  
4 provides "-- I think you said the Department of  
5 State provides the numbers to the counties and then  
6 the counties verify it?

7 A. Right.

8 Q. Did I hear you correctly?

9 A. Yes. We do an extract of the statistics  
10 that are contained in this report, including those  
11 on this page. We provide that information to the  
12 counties. And then they certify to us -- if it's  
13 accurate, they will simply certify the number. If  
14 corrections are necessary, based on their validation  
15 of the data, then they will certify a different  
16 number, potentially.

17 Q. And where does the Department of State get  
18 the, get the data from? You used the word "system".

19 A. It's -- it, it comes out of the -- I, I  
20 always use the term "back end" of the SURE system.  
21 So it's, it's -- we're actually doing a data extract  
22 from the servers, the reporting servers.

23 Q. Okay.

24 So just if we go to the first county,  
25 Adams County, the Department of State would have run

1 a report asking for voter registration canceled for  
2 those reasons, in the top row: "Voter request,  
3 voter death, other move confirm", et cetera?

4 A. It's not running a report. It's, it's --  
5 we're getting really into a technical discussion of,  
6 of how this works, but it is a query of the database  
7 to generate statistics, that are, then, provided to  
8 the counties, that they need to verify, by looking  
9 at their official records, to determine whether  
10 those numbers are accurate.

11 Q. When you use the word "statistics" you --  
12 those numbers represent actual voter records. Would  
13 you agree with me?

14 Like, in Adams County, the "33" is -- that  
15 represents actual voter records?

16 Would you agree with that?

17 A. Well, it -- I wouldn't agree in all cases.  
18 Sometimes it's capturing transactions in the system.

19 Q. I guess I want to clarify, because you  
20 keep using the word "statistics".

21 We're not talking percentages or  
22 probabilities here. These are --

23 A. Well, this is data. These are numbers,  
24 but this is, this is -- and I don't want this to be  
25 confused with the records contained in the SURE

1 system.

2 This is a query of the database to come up  
3 with a number for each of these categories, for each  
4 county, that captures transactions that the county  
5 would have completed throughout the calendar year.  
6 And it's necessary for the county, then, to certify  
7 that we have correctly captured the, the number of  
8 transactions for each of these categories.

9 And that's how the annual report to the  
10 General Assembly is, is built, but it's certified by  
11 the county election offices.

12 Q. So what data does the county look at to  
13 certify these numbers?

14 MS. WALSH: Objection to form.

15 A. The county would run reports on these  
16 various -- you know, this is a pretty broad look at  
17 the annual activity from the SURE system. So the  
18 county would run a number of reports in SURE to  
19 validate the information in, in the data extract.

20 Q. Can you explain to me why the number  
21 produced by the Department of State's query -- we  
22 can just use that first column, "Voter Request" --  
23 would be different than what the, what the county  
24 would find in its own -- in its own look at the  
25 numbers?

1 MS. WALSH: Objection to form.

2 A. Well, it's, as I said, at the end of each  
3 calendar year. So it's a snapshot in time. We, we  
4 do this query as specific -- it's December 31st. We  
5 do this query at a specific time.

6 If the county, for example, has records  
7 that it has not yet processed from, so typically  
8 it's, it's a matter of time. There are occasions  
9 where, you know, very rarely, a county may run a  
10 report and realize that they've made an error and  
11 incorrectly categorized something, but it's  
12 typically because of the timeline.

13 Q. Now, is there any specific reason that  
14 this report is done using these categories, "voter  
15 request", "voter death", "other move", and not other  
16 categories?

17 A. Yeah. This -- as the header indicates,  
18 these are the, the voter list maintenance activities  
19 that are either required by statute or, or provided  
20 for by statute.

21 Q. Is this particular report ever run using  
22 the "cancel - not a citizen" category?

23 MS. WALSH: Objection to form.

24 A. I, I don't know, seeing that does not fit  
25 into voter list maintenance activities, no.

1           Q.    If a non-citizen would have responded to a  
2 mailing, when is it possible that some of these  
3 numbers include registrants who were removed for  
4 being non-citizens because they fell under some of  
5 these other categories?

6           MS. WALSH:  Objection to form.

7           A.    Yes.  It's possible.

8           Q.    All right.

9           I'm going to ask you to go back to  
10 Exhibit 8, which is the Allegheny County documents.  
11 The first page of it was -- at the top, it said  
12 "Allegheny County Rich Fitzgerald County Executive",  
13 Exhibit 8.

14          A.    Yes, I have that.

15          Q.    And if we go back to the one Bates-stamped  
16 173, and it looks like on that screen shot -- we've  
17 already established that this is a screen shot of  
18 the SURE system; correct?

19          A.    Is that 173 or --

20          Q.    Yeah.  At the bottom, it's Bates-stamped  
21 173.  It was kind of printed over, so it's not that  
22 clear.

23                At the top, there's an indication from  
24 Pacer that it's -- of the document?

25          A.    I'm sorry.  I was -- yeah.  I was having a

1 hard time with it. Okay.

2 Q. Okay.

3 A. I think we're --

4 Q. It says, at the top -- somebody wrote in  
5 hand, "PennDOT voted 3 times."

6 Do you see that?

7 A. Yes.

8 Q. Okay.

9 So we previously talked about this  
10 exhibit, and we agreed -- or you agreed that this  
11 was a screen shot from a SURE system; correct?

12 A. That's correct, yes.

13 Q. Now, there appears to be tabs at the top  
14 that say "General", "Districts", "Votes",  
15 "Correspondence".

16 Do you see those?

17 A. I, I do, yes.

18 Q. Can anyone, who's using the SURE system,  
19 click on those tabs?

20 A. I, I don't know if someone with "read only  
21 access" would be able to click on all of those tabs,  
22 but a typical county user, that is updating voter  
23 records, would be able to, yes.

24 Q. So under the tab that says "Votes", what  
25 information would be under that tab or in that tab,



1 if we were able to click on it?

2 MS. WALSH: Objection to form.

3 A. "Votes" I believe would be vote history  
4 for that, that record.

5 Q. And does "vote history" mean whether or  
6 not the voter voted?

7 A. Yes, it would, it would, it would indicate  
8 that for this voter record, that the county recorded  
9 a vote in, in an election.

10 Q. Okay.

11 So in that same exhibit, I'm going to ask  
12 you to go to the previous page, Bates-stamped 172.  
13 At the top -- near the top, it says "Voting History  
14 for Voter".

15 A. Yes.

16 Q. Is that what we would see if we, if we  
17 clicked on that "Vote" tab?

18 A. I, I don't know that you would see this  
19 report. I mean, this is a report -- the other --  
20 the tab is -- it, it -- I guess I'm -- the best way  
21 I can answer it is it would be the same data, but it  
22 wouldn't necessarily be in the form of this report.

23 Does that make sense?

24 Q. Yes.

25 A. Like, this is a formatted report; whereas,

1 the tab would be just, you know, a log, essentially.

2 Q. So that the information on the "Vote" tab  
3 would have this information but it might not look  
4 like this?

5 A. Right.

6 Q. For this practitioner voter, what is  
7 "Method AP" mean?

8 A. "At polls".

9 Q. So would it be fair to conclude, from this  
10 record, that this voter who was canceled for not --  
11 the reason "not a citizen", voted at the polls in  
12 three elections?

13 MS. WALSH: Objection to form.

14 A. Yes. It certainly indicates that this  
15 voter record had vote history recorded at each of  
16 those elections, and the method of voting was  
17 recorded as "at the polls".

18 Q. So is it fair to conclude that this voter  
19 voted at the polls three times?

20 MS. WALSH: Objection to form.

21 A. I -- it -- it's fair to conclude, based on  
22 the record maintained by the county that, that  
23 this -- the individual voted in each of these  
24 elections at the polls.

25 Q. And if we can go back in that same

1 exhibit, to Bates-stamped 173, the tab that says  
2 "Correspondence", which is right next to "Votes" on  
3 the SURE screen.

4 Do you see that?

5 A. I do.

6 Q. So if -- do you know what the user would  
7 see if they clicked on "Correspondence"?

8 A. I don't recall exactly what they would  
9 see. It would be information about what  
10 correspondence was sent to the voter, if any.

11 Q. Do you know if it captures an image or a  
12 scan of the actual correspondence?

13 MS. WALSH: Objection to form.

14 A. No, I believe it's data.

15 Q. What do you mean by "data"?

16 A. Well, it would show a date. It would show  
17 what type of correspondence was sent to the voter.

18 Q. And would it also show correspondence  
19 received from the voter?

20 MS. WALSH: Objection to form.

21 A. It would capture any response to the  
22 correspondence, yes.

23 Q. So if, if we -- looking at the same  
24 exhibit, if we go to the one Bates-stamped 168,  
25 which is actually the first page of the exhibit, at

1 the top, it says -- there's, like, the letterhead  
2 "County of Allegheny Rich Fitzgerald County  
3 Executive date," and then in handwriting "1-17-17",  
4 would you agree that appears to be a letter to that  
5 voter, Mr. Rojas-Orta?

6 A. Yes.

7 Q. So would that -- is your testimony that  
8 that letter -- that the -- the fact that that letter  
9 was sent would be captured in the SURE system under  
10 "Correspondence", but you're not sure if the actual  
11 letter would be in the SURE system?

12 MS. WALSH: Objection to form.

13 A. Well, this, this letter does not look like  
14 correspondence that's generated by the SURE system.  
15 But if the county sent this letter, they could  
16 capture the date in the SURE system of when the  
17 letter was sent.

18 Q. Do you know, if this letter is not  
19 recorded in the SURE system as an image or a scan,  
20 where it would be kept?

21 A. I would think --

22 MS. WALSH: Objection to form.

23 A. -- that it would be kept in the county's  
24 official records.

25 Q. Does the Department of State have a

1 protocol for the counties as to how these types of  
2 records should be kept?

3 A. Well, the statute provides for -- I mean,  
4 the counties have to keep applications and other  
5 documents for the statutorily-required period of  
6 time in their, their paper records.

7 Q. Going back to the Bates-stamped 173, which  
8 is the picture -- or the screen shot of the SURE  
9 screen, do you know what the user would see if they  
10 clicked on that "Changes" tab, which is a few tabs  
11 over from the "Votes" tab?

12 A. It would contain any information about any  
13 changes that were made to the voter record over  
14 time.

15 Q. What do you mean by "information"?

16 A. Again, it would be sort of a log of  
17 changes indicating dates, type of change, et cetera.

18 Q. And then how about under "Documents", what  
19 would be under "Documents"?

20 MS. WALSH: Objection to form.

21 A. Documents would be any, any additional  
22 information that the county uploaded to the SURE  
23 system.

24 Q. What kind of documents would the county  
25 upload to the SURE system?

1 MS. WALSH: Objection to form.

2 A. That would be up to the, up to the county  
3 whatever they believed relevant.

4 Q. Can you give me an example of the document  
5 that would be uploaded?

6 MS. WALSH: Objection to form.

7 A. I can't.

8 Q. Okay.

9 I'm going to point you to the tab that  
10 says "Application". What would the user see under  
11 that tab?

12 A. That would include information about the  
13 applications that were submitted by the registrant.

14 Q. What kind of applications?

15 A. Any, any application, so an initial  
16 application, a change application. So it would, it  
17 would have dates and information about when the  
18 voter submitted an application.

19 Q. When you say "application", do you mean  
20 the initial application to register to vote?

21 A. It could be that, and it could be updates  
22 as well.

23 Q. And I'm sorry. I'm not sure if I  
24 understood your answer.

25 Would an actual scan of the application be

1 in there? Or just a notation?

2 A. Just --

3 MS. WALSH: Objection to form.

4 A. -- yeah, just a notation. So it would  
5 show, it would show data or information about  
6 applications submitted by this registrant.

7 Q. Okay.

8 And immediately under that, there's a  
9 field called "Application Source:", where it says  
10 "DOTIA".

11 Can you tell me what that means?

12 A. "Application Source:" would be the, the  
13 source of where the application came from.

14 Q. Do you know what "DOTIA" stands for?

15 A. I want to be careful here. I know there  
16 are -- there's a statutory prohibition about  
17 divulging the source of agency applications.

18 Q. Okay.

19 Well, my first -- my question was just do  
20 you know what it stands for. You don't have to tell  
21 me what it stands for.

22 A. I do, yes.

23 Q. So under that field, are there more  
24 than -- there would be more -- you could have other  
25 choices, other than "DOTIA".

1                   Would you agree with that?

2           A.     That's correct, yes.

3           Q.     All right.

4                   I'm going to move on to Exhibit 12. This  
5 is three pages. We're going to put it on the  
6 screen.

7           MS. WALSH: Ms. Kerns, what's your  
8 thinking about a lunch break, while we pull this  
9 document up?

10                   (Deposition Exhibit No. 12 marked for  
11 identification.)

12           MS. KERNS: If you'd like, once I get  
13 through this, we can take a break for lunch. How is  
14 that? Or can you not survive that?

15          A.     I'm good.

16           MS. WALSH: That sounds fine.

17          Q.     Okay. Like I said at the beginning, it's  
18 not a marathon. I don't want to torture anybody,  
19 other than asking questions, which I know isn't  
20 always pleasant.

21                   Okay.

22                   Let me know when you can see Exhibit 12.

23          A.     I have it.

24          Q.     So, Exhibit 12 that's captioned -- or at  
25 the top, it says "House State Government Committee



1 Public Hearing on Non-citizens Voting October 25th,  
2 2017", and then it says "Written Testimony of  
3 Jonathan Marks, Commissioner".

4 Is this your written testimony?

5 A. Yes. It appears to be.

6 Q. Did you prepare this document?

7 A. I, I reviewed the documents. I believe  
8 our Communications office would have prepared the  
9 initial draft.

10 Q. And did you, did you appear before a  
11 committee to talk about this on October 25, 2017?

12 A. I did, yes.

13 Q. All right.

14 I'm going to direct you to paragraph 4  
15 where it says, "The Department undertook an analysis  
16 of the statewide voter registration database to  
17 determine whether ineligible residents were  
18 registered and voting. We are using this analysis  
19 as a starting point to examine every part of the  
20 voter registration process."

21 When did the Department first undertake  
22 that analysis referred to in that paragraph?

23 A. I believe it would have been a few months  
24 prior to that hearing, and maybe two months.

25 Q. Why did the Department undertake that

1 analysis regarding ineligible residents registered  
2 in voting?

3 MS. WALSH: The witness has just been  
4 handed a copy of what's been marked Exhibit 12.

5 And I'll just note an objection to the  
6 form. The document speaks for itself.

7 MS. KERNS: Well, I'm going to disagree  
8 with you on that because if the document spoke for  
9 itself, I wouldn't be asking the question.

10 Q. So my question is why did the Department  
11 undertake an analysis of the statewide voter  
12 registration database to determine whether  
13 ineligible residents were registered in voting, and  
14 like you said, approximately two months prior to  
15 when this document was prepared and presented?

16 MS. WALSH: Same objection.

17 A. I'm just reading the testimony.

18 Q. Sure.

19 A. So we undertook this analysis to  
20 understand the scope and the nature of this issue --

21 Q. Well, what, what process --

22 A. -- to inform, to inform our  
23 decision-making.

24 And if you look at the, the next page of  
25 the testimony, we talk about the improvements that

1 the Department had already undergone at PennDOT, and  
2 plans for future enhancements. So we were -- we  
3 undertook the analysis to inform -- you know, inform  
4 our decision-making regarding this issue of, of  
5 registrants inadvertently registering to vote  
6 without, without possessing the qualifications.

7 Q. So my question was why this particular  
8 analysis at this particular time?

9 MS. WALSH: Objection; asked and answered.

10 MS. KERNS: I don't think he did answer  
11 why.

12 Q. What triggered this analysis?

13 MS. WALSH: Same objection.

14 A. Well, I mean, the Department was aware  
15 that citizens may have been put in a position or --  
16 excuse me, non-citizens may have been put in a  
17 position that led them to register inadvertently,  
18 and we wanted to understand both the scope of that  
19 issue and, and also the potential causes of it, so  
20 that any additional enhancements that we made would  
21 be effective.

22 Q. So how was the Department made aware of  
23 that?

24 A. Well, we were, we were made aware of, of  
25 the, the potential PennDOT issue based on

1 discussions with county election officials.

2           Going back to 2015, we did understand,  
3 based on discussions with stakeholders, that the  
4 Motor Voter screens in particular may need  
5 improvement to avoid the possibility of somebody  
6 inadvertently registering without possessing those  
7 qualifications.

8           Q.    So was this analysis -- did you  
9 specifically only focus on what you termed  
10 inadvertent registrations by non-citizens? Or did  
11 you focus on any registrations by non-citizens?

12           A.    Well, it would include any registrations  
13 by potential non-citizens. But based on the  
14 information we had available, was made available to  
15 us by county election officials, it appeared that  
16 these were inadvertent registrations due to  
17 misunderstanding.

18           Q.    And who came to that conclusion that, that  
19 it was a misunderstanding of the voter registrant?

20           MS. WALSH: Objection to form.

21           A.    Well, I believe, you know, I --  
22 ultimately, the county election officials made that  
23 determination.

24           Q.    How would a county election official know  
25 whether or not a voter registration was inadvertent?

1 MS. WALSH: Objection to form.

2 A. Well, I -- they would have received  
3 communication from the voter indicating that they  
4 had inadvertently registered to vote or that -- so I  
5 would expect that in most cases they would obtain  
6 that information directly from the registrant.

7 Q. So are you saying that voters would use  
8 that term "inadvertent" and communicate that to the  
9 county registration officials?

10 A. I don't know that they would use that  
11 specific term. What I'm saying is county election  
12 officials reported to us that they had concerns  
13 about the potential for non-citizens to  
14 inadvertently register. That's how it was  
15 characterized. And that's what we were looking at.

16 Our analysis, however, looked at the  
17 entire universe of voter records that were canceled  
18 for that reason.

19 Q. So let's start with these county election  
20 officials. Was this all 67 counties brought this to  
21 your attention? Or was it a particular county or  
22 counties?

23 A. It -- our -- primarily Philadelphia  
24 County.

25 Q. Was there a particular individual in

1 Philadelphia County that brought this to your  
2 attention?

3 A. The -- Commissioner Schmidt had initially  
4 reached out to the Department in 20-- -- earlier in  
5 2017 to raise his concerns about this potential  
6 issue.

7 Q. Did any other counties bring it to the  
8 attention of the Department of State?

9 A. I don't recall having any discussions with  
10 other counties.

11 Q. Going back to that same paragraph in your  
12 report, you state "The Department undertook an  
13 analysis."

14 Can you describe what you mean by  
15 "analysis"?

16 A. Well, analysis is -- so we, we looked at  
17 the 1,160 records.

18 And we actually provide a summary of that  
19 analysis, beginning at the bottom of page 1  
20 regarding those records.

21 Q. Okay.

22 Mr. Marks, I'm going to ask you to step  
23 back, though, because this says "The Department  
24 undertook an analysis." And then you jumped to  
25 1,160 records. So I'm having trouble understanding

1 how you got from Commissioner Schmidt told you  
2 there's a problem, to we found 1,160 records.

3 Can you walk me through those steps.

4 A. Well, we, we were doing an analysis of  
5 data that was available to us in the SURE system.  
6 So I don't know, I don't know that you connect the  
7 two directly, but it was -- certainly Philadelphia  
8 County was doing its own review or analysis,  
9 whatever you want to call it, of this issue.

10 The Department then undertook looking at  
11 it on a statewide basis and, and expanding it to  
12 records maintained by 67 counties. And that's how  
13 we arrived at this end result that's, that's  
14 reported here in my testimony.

15 Q. Well, Mr. Marks, what data is captured in  
16 the SURE system that would have alerted you that a  
17 particular registrant was ineligible due to  
18 citizenship status?

19 MS. WALSH: Objection to form.

20 A. Well, I think we've just spent the last  
21 several hours reviewing the information that, that  
22 would be recorded by the counties in the SURE system  
23 that would indicate records that, that would fit  
24 that category. And these are the "cancel - not a  
25 citizen" records.

1           Q.     So in this testimony where you say "The  
2     Department undertook an analysis of the statewide  
3     voter registration database to determine whether  
4     ineligible residents were registered in voting,"  
5     that analysis was to look at the SURE system and  
6     determine whether any records were canceled;  
7     correct?

8           MS. WALSH:  Objection to form.

9           A.     Correct, yes.

10          Q.     So that analysis would not have included  
11     any registrants who were ineligible due to  
12     citizenship status but had not yet been canceled?

13          MS. WALSH:  Objection to form.

14          A.     That's correct, yes.

15          Q.     When you say "the Department undertook  
16     analysis", was there any persons, outside of the  
17     Department, involved in this analysis?

18          A.     No.  This -- the 1,160 records, this was  
19     conducted by the Department.

20          Q.     In the paragraph above that paragraph that  
21     we're talking about, there's a sentence that says  
22     "data alone - particularly point-in-time data like  
23     that available from the Systematic Alien  
24     Verification for Entitlement (SAVE) program - is not  
25     in and of itself a reliable indicator that a person



1 is not a U.S. citizen."

2 Can you tell me why that is not a reliable  
3 indicator?

4 A. Because it's been proven over time to be  
5 very unreliable.

6 Q. Is there a more reliable system than the  
7 Systematic Alien Verification for Entitlements  
8 program?

9 MS. WALSH: Objection to form.

10 A. I'm not aware of a, a system that is  
11 reliable in terms of validating a person's  
12 citizenship status.

13 Q. All right.

14 You indicate in your testimony that "In  
15 our initial analysis of statewide records, we found  
16 1,160 records that indicate a registrant apparently  
17 self-reported and canceled their registration  
18 because they were not citizens."

19 So the universe of your analysis was only  
20 those registrants who had self-reported their  
21 citizenship status?

22 A. Correct.

23 Q. And over what timeframe was, was this  
24 analysis done, meaning what years did it cover? Or  
25 did it cover the entire -- everyone in the database

1 in the SURE system at that time?

2 A. It included everyone in the database at  
3 that time. The high level, 1,160.

4 And if you read my testimony, the 2000  
5 through 2017, we were looking at vote history,  
6 meaning that piece of it.

7 Just keep in mind, as we discussed  
8 earlier, counties did not start transitioning to  
9 SURE until 2003, and that continued through 2005.

10 So prior to that, there's -- you know,  
11 there's not a hundred percent reliability of that  
12 data because it would have been contained, if  
13 anywhere, in a Legacy system maintained by the  
14 county.

15 Q. In this testimony where you call it -- you  
16 refer to these as "1,160 records", does that mean  
17 1,160 registrants?

18 A. It's 1,160 voter records which would be  
19 registrants, yes.

20 Q. And for this particular analysis, if the  
21 registrant had not self-reported, they would not be  
22 captured in this particular analysis; correct?

23 MS. WALSH: Objection to form.

24 A. Well, I, I don't know that in every case  
25 they were self-reported. This is apparently

1 self-reported. That was the information available  
2 to us, but it's, it's -- what it indicates is what  
3 it says; it's 1,160 records that were canceled for  
4 the reason "not a citizen".

5 Q. Other than self-reporting, would there --  
6 to your knowledge, would there be any other way the  
7 registrant would have been canceled, other than  
8 self-reporting?

9 A. If, if the county were made aware that  
10 somebody may be in that category and verified that,  
11 they could, they could cancel a record for that  
12 status reason.

13 Q. How would that happen?

14 A. I -- it would be --

15 MS. WALSH: Objection to form.

16 A. They would have to be made aware that --  
17 you know, it's like any other Motor registration  
18 record, if they obtained information indicating that  
19 they needed to validate or otherwise verify the  
20 qualifications of the registrant, they would then  
21 pursue that and make a determination.

22 Q. With regard to these 1,160 records, was --  
23 do you know if a -- if there was a report run on the  
24 statewide SURE system to determine to find these,  
25 based on that category? Or how the Department came

1 up with these 1,160 records?

2 A. It was a query of the database.

3 Q. When you were -- is this, is this similar  
4 to the query you were talking about before, the  
5 "back end" query?

6 MS. WALSH: Objection do form.

7 A. Yes.

8 Q. And that would have been accurate as to  
9 that date and time as to whatever was entered into  
10 the SURE system; correct?

11 A. That's correct.

12 Q. Okay.

13 It indicates that there was only -- "the  
14 1,160 records were only identified from 46  
15 counties." Is that because the query was only  
16 limited to those counties? Or were all 67 --

17 A. No.

18 Q. -- counties queried?

19 I'm sorry.

20 A. No. All 67 counties were queried.

21 Q. And your report indicates that 248 of  
22 those voter registrants had voted at least one time.

23 Do you know if that was part of the query,  
24 the number of times voted?

25 A. Yes, it was. It would have queried "vote

1 history" for each of those records.

2 Q. So this testimony was October 25th, 2017.  
3 So as of, as of the time that you did this analysis,  
4 which you testify was approximately two months prior  
5 to the testimony, you -- the Department had  
6 information that at least 248 individuals who were  
7 not citizens had voted in Pennsylvania; is that  
8 correct?

9 MS. WALSH: Object to the form.

10 A. I don't recall exactly what, what the  
11 timeline was for the completion of the analysis, but  
12 at some point we did have this data indicating the  
13 records -- that 1,160 records were canceled for the  
14 reason "not a citizen", and that of those, 248 of  
15 those records had recorded on their vote history at  
16 least one vote.

17 Q. Other than the query in the SURE system,  
18 did your analysis include any other research?

19 A. No. It was, it was conducted with data in  
20 the SURE system.

21 Q. Okay.

22 If we go to the next page, page 2 of 3 of  
23 your testimony. It's Bates-stamped 1181 at the  
24 top -- near the top. You refer to "a deeper  
25 analysis".

1           Can you describe for me what "a deeper  
2     analysis" is?

3           A.     Well, that was looking not -- that was  
4     looking beyond the high-level vote history, the  
5     statistics, and actually looking at individual years  
6     and how many potential ballots may have been cast by  
7     that group of registrants.

8           Q.     So was this a different query in the back  
9     end of the SURE system?

10           MS. WALSH:  Objection to form.

11           A.     It, it would have been a drill down into  
12     the high-level numbers.

13                   So if you go to the previous page, or even  
14     at the top of that page, you'll see where we  
15     identify the 248 records and then provide the  
16     records that show at least one vote, and then we  
17     drill down further to actually expand that to show  
18     the total number or votes, which is 544.

19                   Does that, does that make sense?  I may  
20     have done a bad job of explaining that, but it's,  
21     it's building out the details of those 248 records.

22           Q.     You're saying the 248, the "248" refers to  
23     the actual voters.  Some of those voters voted more  
24     than once, which means that it would have been a  
25     total of 544 ballots?

1           A.     It refers to the 248 voter records.

2                     And on page 1, we summarize the data on  
3 page 2. In the first full paragraph, we provide  
4 details about those 248 and how many, how many  
5 ballots may have been cast and over what time  
6 period.

7           Q.     And when you talk "deeper analysis", you  
8 were still limiting yourself to the 1,160 records;  
9 correct?

10          A.     We were limiting ourselves to the data  
11 that was available in SURE, yes.

12          Q.     All right.

13                     If you -- looking at this same exhibit,  
14 page 2 of 3 at the bottom, the second paragraph from  
15 the bottom --

16          A.     Yes.

17          Q.     -- your testimony states that "The  
18 Department is in the process of establishing a voter  
19 registration guidance working group that includes  
20 key stakeholders."

21                     Was that working group established?

22          A.     It, it was, yes.

23          Q.     When?

24          A.     Oh, I don't, I don't recall the exact  
25 timeline.

1 Q. Who was on the working group?

2 A. I don't have, I don't have the list in  
3 front of me, but it was Department staff working  
4 with county officials, as well as other interested  
5 stakeholders.

6 Q. So --

7 A. There is a --

8 I'm sorry. Go ahead.

9 Q. No. Go ahead. Finish what you were going  
10 to say.

11 A. I believe there is information on our Web  
12 site, but I, I don't have it in front of me.

13 Q. When you say "other interested  
14 stakeholders", would they be individuals who are not  
15 employees of the Department of State or any one of  
16 the 67 counties?

17 A. That's correct, yes.

18 Q. Who decided who was on the working group?

19 A. Well, that's -- it's ultimately, you know,  
20 our stakeholders are anyone who, you know, reaches  
21 out to the Department of State. They're, they're  
22 typically, you know, voting rights' advocates. So  
23 it includes the League of Women Voters, Committee of  
24 70 in Philadelphia. It would be the County  
25 Commissioners Association of Pennsylvania. It



1 would -- it includes -- and, again, I don't have the  
2 list in front of me, but that's -- that hopefully  
3 gives you the general gist of it.

4 Q. Would anyone be turned away from the  
5 working group?

6 A. That would ultimately be up to the members  
7 of the working group.

8 Q. That sounds a little bit circular. So who  
9 decides --

10 A. Well, it's an informal group of  
11 stakeholders. So it's -- you know, it's not a  
12 formally established, you know, body.

13 Q. Do you know if anyone was turned away to  
14 be on this working group?

15 MS. WALSH: Objection.

16 A. I'm not aware of anyone, no.

17 Q. And is this working group still in place?

18 A. No. This, this specific working group,  
19 no.

20 Q. Do you know why this working group is no  
21 longer in place?

22 A. It, it actually completed its, its  
23 mission.

24 Q. What was its mission?

25 A. Well, I mean I think it's, you know,

1 evaluating the voter registration process.

2 Q. Did the working group issue a report?

3 A. Again, it's not a formal working group.  
4 This was an informal working group. There is a work  
5 product on the Department's Web site, a Motor Voter  
6 Registration Guide for Voter Registration drives,  
7 but it also informed our -- and really validated our  
8 assumptions about what we needed to be looking at,  
9 as it relates to this issue, and what additional  
10 work we may need to do.

11 Q. As it relates to what particular issue?  
12 Can you describe what particular issue you're  
13 talking about?

14 A. Inadvertent registration of, of potential  
15 non-citizens.

16 Q. Okay.

17 So where, in this testimony, do you show  
18 that these registrations were inadvertent?

19 MS. WALSH: Objection to form.

20 A. Again, that is based on the information  
21 that was available to us at the time.

22 Q. Is that information in some type of a  
23 report or something that I could review that shows  
24 that the registration was inadvertent?

25 A. That was --

1 MS. WALSH: Objection to form.

2 A. -- that was, that was the way it was  
3 characterized by county officials and other groups  
4 that were concerned about this problem.

5 Q. And do you know how they came to that  
6 conclusion that it was inadvertent? Were these  
7 1,160 voters interviewed?

8 MS. WALSH: Objection to form.

9 A. You'd have to ask them.

10 MS. KERNS: All right.

11 So I was going to move on to another  
12 exhibit. So I think this would be a good time to  
13 break.

14 THE WITNESS: Thank you.

15 MS. KERNS: Can we say -- I don't want to  
16 break for too long.

17 And how much time do you need, Ms. Walsh?

18 MS. WALSH: 2:30.

19 MS. KERNS: Could we say 2:15? Or is that  
20 too soon?

21 MS. WALSH: We'll try for 2:15. That's  
22 fine.

23 MS. KERNS: Okay.

24 I'll see you back here at 2:15.

25 (Luncheon recess, 1:45 o'clock p.m.)

1           until 2:15 o'clock p.m.)

2                       AFTERNOON SESSION

3                       (Deposition Exhibit No. 13 marked for  
4           identification.)

5 BY MS. KERNS:

6           Q.    All right.

7                       I'm going to put up Exhibit 13 on the  
8           screen, and this is an e-mail dated Friday,  
9           April 27th, 2018, and it's Bates-stamped D182.

10                    Let me know when you can see it.

11           A.    I can see it.

12           Q.    Okay.

13                    So this is Exhibit 13.  It's an e-mail  
14           from Kathryn Boockvar.

15                    And I'm going to ask you if you've ever  
16           even this e-mail prior to today?

17           A.    It does look familiar, yes.

18           Q.    All right.

19                    It's addressed to "Election Stakeholder".

20                    Are these recipients the same working  
21           group that we mentioned and talked about when we  
22           talked about the previous exhibit, Exhibit 12,  
23           before the lunch break?

24           A.    The working group would have been a subset  
25           of, of this group, but these are the election

1 stakeholders, yes.

2 Q. So is there anyone who's a stakeholder  
3 who's not on this list?

4 A. There doesn't appear to be.

5 Q. Who determined who was a stakeholder?

6 A. Well, again, that is -- I mean that's  
7 ultimately determined by the, the stakeholder group  
8 itself, but the stakeholder work group is something  
9 that has been in place for a number of years. It  
10 started with, like, county election officials, and a  
11 few -- the statewide organizations like the League  
12 of Women Voters. And it's an informal, informal  
13 group of stakeholders.

14 MS. WALSH: Ms. Kerns, we handed Mr. Marks  
15 a copy of Exhibit 13.

16 MS. KERNS: Okay.

17 Thank you.

18 Q. And was this publicly advertised, so that  
19 if other individuals or group felt that they could  
20 be stakeholders, they could join this group?

21 A. Again, it's an informal group. So it's  
22 not, it's not provided for or required by statute or  
23 anything else. It is -- it made sense to us, to the  
24 Department, to include county election officials,  
25 county commissioners, through CCAP and other groups

1 that expressed interest in voting rights' advocacy,  
2 to have -- you know, to come together and, and, you  
3 know, discuss issues that, that were important to  
4 them.

5 Q. So who decided who to include in this  
6 group?

7 A. I think initially, I, I believe it may  
8 have been Secretary Cortés.

9 Q. And then were different groups or  
10 individuals added as time progressed?

11 A. Yes. My recollection is as time  
12 progressed, groups were added. And this -- you  
13 know, it's become sort of a self-functioning thing  
14 where, you know, the group members, the stakeholder  
15 members themselves will determine, you know, what  
16 additional group that, you know, may be involved.

17 Q. Does the group keep records of their  
18 meetings?

19 A. No. Again, this is all very informal.  
20 These are discussions primarily.

21 Q. Are there records of the discussions?

22 A. Records of the discussions? There are --  
23 I'm, I'm not aware that there are minutes or  
24 anything from, from the meeting.

25 Q. So there was a physical meeting?

1           A.     In the past, there have been. As I said,  
2     this has been many in place for many, many years.  
3     So there have been physical meetings. There have  
4     been -- obviously, with COVID-19, there have been --  
5     they've all been virtual meetings.

6           Q.     When was the last meeting?

7           A.     The last meeting would have been just a  
8     couple of weeks ago.

9           Q.     And was that announced anywhere?

10          A.     No. Again, it's an informal group of  
11     stakeholders.

12          Q.     So this meeting was not announced?

13          A.     Correct.

14          Q.     Is the Department of State keeping a  
15     record of the communications to and from this group?

16                 MS. WALSH: Objection to form.

17          A.     Yeah. I'm not sure what you mean by  
18     "communications", but, certainly, any records that  
19     the Department is required to maintain, whether it's  
20     about this or any other subject, are maintained  
21     appropriately.

22          Q.     Well, it appears that Kathryn Boockvar,  
23     from the Department of State, communicated with this  
24     group by electronic mail.

25                 So is the Department keeping records of

1 the communications to this group and from this  
2 group?

3 MS. WALSH: Objection to form.

4 A. Well, again, we have to maintain records  
5 like e-mails. I mean, the fact that you have this  
6 record indicates that our staff is maintaining their  
7 records as required.

8 Q. And are the records, regarding this  
9 communication, specifically with this group being  
10 maintained separately so that if someone were to  
11 request all of the correspondence to and from this  
12 group, you would be able to produce it?

13 MS. WALSH: Objection to form.

14 A. Again, we -- like all other e-mail, we are  
15 maintaining it as required. So, yes; an e-mail to  
16 this group, e-mail to anyone who contacts the  
17 Department of State would, would be made available  
18 as appropriate.

19 Q. But anyone who contacts the Department of  
20 State would have to know these meetings were taking  
21 place to even ask for it; correct?

22 MS. WALSH: Objection to form.

23 To ask for what?

24 Q. The communication from the Department of  
25 State to this group?



1 MS. WALSH: Same objection.

2 A. I suppose they would have to be informed  
3 what they were, what they were asking for.

4 Q. Now, this e-mail starts off by saying  
5 "Dear Election Stakeholder: As reported previously,  
6 there was a programming error in the PennDOT Motor  
7 Voter electronic system that may have led to some  
8 individuals inadvertently registering to vote."

9 Are there documents that exist as to this  
10 specific programming error?

11 MS. WALSH: Objection to form.

12 A. Documents that exist regarding the  
13 programming error?

14 Q. Yes.

15 A. I, I don't know. It's a pretty broad  
16 category, but any documents that exist regarding the  
17 PennDOT Motor Voter issue would have been turned  
18 over during discovery.

19 Q. And back to the working group. You said  
20 there was a meeting a few weeks ago.

21 Did you attend that meeting, virtually or  
22 otherwise?

23 A. I did, yes.

24 Q. How long did the meeting last?

25 A. I believe it was a little bit under an

1 hour.

2 Q. Did you take notes?

3 A. I did not, no.

4 Q. When was the meeting prior to that?

5 A. I don't, I don't recall. It had been  
6 several months.

7 Q. In looking at this list, was there any,  
8 was there any attempt to make sure that there was  
9 some diversity in this, in this meeting -- for these  
10 meeting participants?

11 And what I mean by "diversity" is it  
12 appears a lot of these organizations are either  
13 leftist organizations or funded by leftist-type  
14 groups.

15 So was there any attempt to include people  
16 from other political leanings?

17 MS. WALSH: Objection to form.

18 A. I, I don't know what's meant by "leftist"  
19 or left leaning or, you know, this -- a lot of these  
20 are natural -- you know, County Commissioners  
21 Association, the NAACP, League of Women Voters. I  
22 mean, these are pretty widely known organizations  
23 in -- you know, in the case of the League of Women  
24 Voters either non-partisan or bipartisan. So I  
25 don't -- aside from your characterization, again,

1 this is an informal group of stakeholders. Just,  
2 just like any other group of, of individuals who  
3 would reach out to the Department of State regarding  
4 the specific issue.

5 Q. So were there other informal groups set up  
6 with the Department of State, like this specific  
7 working group regarding voter registration issues?

8 MS. WALSH: Objection to form.

9 A. No. Not, not related to, to voter  
10 registration or elections.

11 Q. When is the next meeting of this working  
12 group?

13 A. I, I don't know if we have a meeting  
14 scheduled yet at this point.

15 Q. Will there be another meeting?

16 A. I expect that there will be.

17 Q. If my client, Public Interest Legal  
18 Foundation, considered themselves a stakeholder,  
19 would they be able to start participating in these  
20 meetings?

21 MS. WALSH: Objection. You've moved very  
22 far afield from the topics that brought us here  
23 today.

24 A. Yeah. Again, it would be up to the other  
25 stakeholder members.

1 Q. Would there be a vote?

2 MS. WALSH: Objection.

3 A. Again, this is --

4 MS. WALSH: You need to talk about the  
5 specific topics in the notice and subject to our  
6 objections. You're now very far afield from that.  
7 You're asking hypothetical questions about things  
8 that might or might not happen in the future, about  
9 issues that have nothing to do or matters that have  
10 nothing to do which was put forth.

11 I encourage you to sticking more closely  
12 to the notice that you served and the objections  
13 noted.

14 Q. So the question was would there be a vote?

15 MS. WALSH: Objection; calls for  
16 speculation.

17 A. Yeah. It's an informal group. So it  
18 would be, it would be a question to the, to the  
19 members.

20 Q. Okay.

21 In this Exhibit No. 13, the first  
22 paragraph indicates, and that Ms. Boockvar wrote,  
23 "Since then, an intense data analysis yielded a list  
24 of individuals for whom voter registration  
25 eligibility required further confirmation."

1                   What was that "intense data analysis"?

2           A.     That was an analysis conducted in, in  
3     consultation with our Office of Chief Counsel.

4           Q.     So what was done to intensely analyze the  
5     data?

6           A.     Our counsel engaged with an expert to do  
7     an analysis of voter registration records and motor  
8     vehicle records to determine the, the universe of  
9     potential individuals that required more -- had more  
10    scrutiny in terms of their, their qualifications  
11    specifically related to citizenship.

12          Q.     What was the methodology used in the  
13    analysis?

14                MS. WALSH:  Objection to the extent you're  
15    calling for information that's protected from  
16    disclosure by the attorney-client privilege and the  
17    work-product doctrine.

18                Now, the witness -- I would encourage the  
19    witness -- or caution the witness not to disclose  
20    any communications that might fall within that  
21    category.

22          A.     I, I, I think we described it publicly as  
23    a race blind analysis conducted by an expert using  
24    various sources of data to confirm this list of  
25    potential -- this list of individuals that needed

1 additional follow up.

2 Q. What were the sources of data?

3 A. I don't know.

4 Q. Who was the expert?

5 A. I don't know the name of the expert.

6 Q. Did the expert issue a report?

7 A. I don't know if the expert issued a  
8 report.

9 Q. How would the expert communicate the  
10 result of that work, which appears to be a letter  
11 sent to 7,702 individuals?

12 MS. WALSH: Objection to form.

13 A. Well, again, this was conducted by our  
14 Office of Chief Counsel. So I'm not, and I'm not  
15 familiar with, with the way that information is  
16 communicated between counsel and the expert.

17 Q. What data did Mrs. Boockvar use in order  
18 to determine -- or did the Department of State use  
19 in order to determine that it would mail a letter to  
20 7,702 individuals?

21 MS. WALSH: Objection to form.

22 A. Well, ultimately, the Department was  
23 provided a list that was derived from the Motor  
24 Voter records and that comparison against the voter  
25 records, and that's, that's where the list came

1 from.

2 Q. "Was provided". You're saying "was  
3 provided". The Department was provided that list by  
4 who?

5 MS. WALSH: I'll note an objection to  
6 form, and also to the extent you're asking for  
7 privileged communications and privileged attorney  
8 work product.

9 MS. KERNS: I'm not asking for  
10 communication or work product. I'm asking for who  
11 provided this information. That's not --

12 MS. WALSH: I noted my objection.

13 A. I mean, I've already answered this  
14 question. This was done by our Office of Chief  
15 Counsel. So it would have been ultimately through  
16 our chief counsel's office.

17 Q. So is it your testimony that no one in the  
18 Department of State knows the identity of this  
19 expert? Or just you don't know the identity of this  
20 expert?

21 MS. WALSH: Objection to form. There's an  
22 objection to the request for that information, and  
23 it's included in our written objection and there's  
24 objections to the Discovery Request.

25 Q. So, Mr. Marks --

1 MS. WALSH: You're asking -- to the extent  
2 you're asking for the identity of an expert, you're  
3 asking for privileged information.

4 MS. KERNS: I disagree with you.

5 MR. BRIER: Well, then, take it to the  
6 Court.

7 Q. So, Mr. Marks, is it your testimony that  
8 the Department of State doesn't know the identity or  
9 does not want to reveal the identity?

10 MS. WALSH: Same objection. The  
11 witness -- this isn't a topic that he was designated  
12 to testify on.

13 A. I --

14 MS. WALSH: You're outside the scope of  
15 your own notice and our objections.

16 Q. So, Mr. Marks, do you not know the name of  
17 the person?

18 MS. WALSH: Objection; asked and answered.  
19 He's told you he doesn't know.

20 Q. Mr. Marks, have you ever heard of somebody  
21 called Eitan Hersh, E-I-T-A-N, H-E-R-S-H?

22 A. I have not, no.

23 Q. With regard to this e-mail from Kathy --  
24 Kathryn Boockvar, do you know why these 7,702  
25 individuals were determined to be, to be required to



1 send this letter from the Department of State?

2 MS. WALSH: Objection to form.

3 A. It --

4 MS. WALSH: Also, to the extent, again,  
5 you're delving into privileged areas. If you can  
6 answer without disclosing privileged information.

7 A. It, it is our understanding based on that  
8 expert analysis conducted by our counsel, that this  
9 was the group of individuals that required  
10 additional scrutiny regarding their qualifications.

11 Q. Are these individuals in addition to the  
12 1,160 individuals that we talked about with regard  
13 to the last exhibit or does this encompass those  
14 individuals?

15 A. It would be separate from those  
16 individuals. So it would be in addition to. It  
17 would be -- 1,160 were records already canceled.

18 Q. And this letter uses the term  
19 "inadvertent" several times, where Ms. Boockvar, in  
20 the first sentence, she states, "As reported  
21 previously, there was a programming error in the  
22 PennDOT Motor Voter electronic system that may have  
23 led to some individuals inadvertently registering to  
24 vote."

25 How is the analysis done for these

1 individuals that their registration was inadvertent?

2 A. Well, this -- so reading this sentence you  
3 just read, you know, we were talking about it, and  
4 this ties us back to my testimony before the House  
5 State Government Committee, the programming error at  
6 PennDOT, all of the information that was available  
7 to us and the way it was characterized to us by, you  
8 know, multiple groups, including county election  
9 officials that they were inadvertent.

10 This analysis, this expert analysis done  
11 by our Office of Chief Counsel, under threat of  
12 litigation, is separate from the 1,160. So I want  
13 to make sure we're keeping those two things  
14 separate.

15 Q. What was the threat of litigation? Threat  
16 of litigation by who?

17 A. Well, I would -- certainly, you know, your  
18 client, by this point in time.

19 Q. So this intense data analysis was  
20 completed because my client threatened to litigate?

21 MS. WALSH: Objection to form; that's not  
22 what the witness testified to.

23 A. Yeah. I mean, this, this is something  
24 that we certainly believed that there was potential  
25 for litigation. There was actually, you know,

1 threat of litigation. And we wanted to protect  
2 personal information as well about individuals who  
3 ultimately became the subject of this analysis.

4 Q. Did the Department of State, once it  
5 received this intense data analysis from this  
6 expert, did the Department of State review the data  
7 and then determine to send out the letters to 7,702  
8 individuals?

9 MS. WALSH: Objection.

10 Q. Or, or did The Department of State just  
11 take the data from the expert and decide, then, to  
12 send the letters to all of the individuals?

13 MS. WALSH: Objection to form, and also  
14 note an objection to the extent you're asking about  
15 privileged communications with counsel and other --

16 Q. Now, you testified, Mr. Marks, that you  
17 received an intense data analysis from an expert.

18 Did the Department of State then do  
19 further analysis and decide who to send letters to?  
20 Or did the Department of State just take that  
21 analysis and send the letters just only based on  
22 that analysis?

23 MS. WALSH: Objection to form, to the  
24 extent it mischaracterizes the witness's testimony  
25 and also an objection to the extent you're asking

1 for privileged communication.

2 If you can answer without disclosing  
3 privileged communication, you may.

4 A. I, I can't speak to what review our  
5 counsel's office did, but we were assured that this  
6 list represented the most responsible, accurate list  
7 of individuals who required additional follow up  
8 regarding their qualifications to be registered.

9 Q. And what put them on that list?

10 MS. WALSH: Objection; it calls for a  
11 privileged communications and privileged attorney  
12 work product.

13 A. Well, I think it's --

14 MS. WALSH: If you can answer without  
15 disclosing privileged communications, you may.

16 A. I mean I think it's clear from this e-mail  
17 that it -- they were derived from this analysis that  
18 included Motor Voter -- or motor vehicle records as  
19 well as voter registration records.

20 Q. And those voter registration records are  
21 from the SURE system?

22 MS. WALSH: Objection, to the extent  
23 you're asking for privileged communication and  
24 privileged attorney work product. If you can answer  
25 without disclosing privileged communications, you

1 may.

2 A. I, I understand that voter registration  
3 records from the SURE system were one element of  
4 data that fed the analysis.

5 Q. What other voter registrations exist in  
6 the Commonwealth of Pennsylvania, other than the  
7 SURE system records?

8 A. Well, again, that is -- the SURE system is  
9 the official registry. The 67 county Boards of  
10 Election or county voter registrars are required to  
11 maintain their official list of voters inside the  
12 SURE system. So the answer is I -- there are no  
13 other official records.

14 Q. And in this Exhibit No. 13, in this  
15 e-mail, near the bottom, the second paragraph from  
16 the end, it states the department will use  
17 nationally-recognized authentication programs such  
18 as the ERIC voter list maintenance database in this  
19 effort.

20 What is the ERIC voter list maintenance  
21 database?

22 A. I, I don't know exactly what, what  
23 secretary -- or, or Ms. Boockvar meant at the time,  
24 but the ERIC program is the Electronic Registration  
25 Information Center, of which Pennsylvania is a

1 member. And it's a consortium of states that share  
2 voter registration and motor vehicle data to aid  
3 each member state in conducting required list  
4 maintenance activities.

5 Q. How long has Pennsylvania been a member of  
6 ERIC?

7 A. Since 2015.

8 Q. In this e-mail, Ms. Boockvar states "The  
9 Department will use-nationally-recognized  
10 authentication programs such as the ERIC voter list  
11 maintenance database in this effort."

12 Did that use of ERIC, in reality, occur  
13 after the e-mail was sent on April 27th, 2018?

14 MS. WALSH: Objection to form.

15 A. Well, I mean we continue to use ERIC to  
16 this day to conduct -- to enable counties to conduct  
17 voter list maintenance.

18 If you're talking about the analysis, back  
19 up in the first paragraph, I'm not -- I don't  
20 believe that ERIC was, was used in that analysis.

21 Q. And do you have access to ERIC?

22 A. Well, all -- the member states have access  
23 to ERIC. I'm not sure what you mean by "access". I  
24 mean, ERIC is a -- is an organization, a consortium  
25 of states, and then we are a member. So to that

1 extent, yes, we have access.

2 Q. I'm going to go to exhibit -- the next  
3 exhibit, Exhibit No. 14.

4 (Deposition Exhibit No. 14 marked for  
5 identification.)

6 Q. Let me know when you can see that on your  
7 screen.

8 Can you see Exhibit 14 on your screen?

9 A. This is titled the Senate State Government  
10 and Transportation Committee Public hearing on Motor  
11 Voter, Unlawful Voting and Cybersecurity.

12 Q. Yes. This is the written testimony of  
13 then Acting Secretary Robert Torres.

14 A. Yes. I see that.

15 Q. And it's dated December 12th, 2017.

16 I'm going to ask you to go to page -- or I  
17 can move it to page 3. And on page 3, in the third  
18 paragraph -- the second full paragraph from the top,  
19 it -- Robert -- Mr. Torres testified, "Finally, the  
20 Department is drafting a voter registration and list  
21 maintenance modernization plan."

22 Do you see that, where that sentence is in  
23 the testimony?

24 A. I do, yes.

25 Q. Was that plan drafted?

1           A.    I don't, I don't know specifically what he  
2 was referring to by this plan, but there's certainly  
3 our -- a multitude of work products of that  
4 modernization plan on our, on our Web site.

5           Q.    So any plan that was drafted for voter  
6 registration and list maintenance is available on  
7 the Department's Web site?

8           MS. WALSH:  Objection to form.

9           A.    Again, I don't know what he was referring  
10 to specifically by "plan", but certainly work  
11 products regarding voter registration list  
12 maintenance and even voting modernization are  
13 available on the Department's Web site.

14          Q.    Are there any plans that are drafted that  
15 are not available on the Department's Web site?

16          MS. WALSH:  Objection to form.  He told  
17 you he doesn't know what this, what this written  
18 testimony refers to.

19          A.    Yeah.  And I'm not -- not knowing exactly  
20 what he was referencing there, you know, the  
21 Department has, you know, a variety of, of  
22 documents, but it's hard for me to know exactly what  
23 he was referring to here.

24          Q.    Okay.

25          MS. WALSH:  The witness has been handed a



1 copy of Exhibit 14.

2 Q. Does The Department have a voter  
3 registration and list maintenance modernization  
4 plan?

5 A. Not that I'm aware of, no.

6 Q. Is the Department in the process of  
7 drafting a voter registration and list maintenance  
8 modernization plan?

9 A. As, as this term is used here by then  
10 Secretary Torres, no.

11 Q. Well, how else would the term be used?

12 A. Well, I --

13 MS. WALSH: Objection. You're asking the  
14 witness about a document that the witness -- you  
15 know, a record -- this is a document that the  
16 witness isn't familiar with. You're very far afield  
17 from the 30(b)(6) notice that brought us here today  
18 and our objections to that notice, and also I object  
19 to the form of the question.

20 Which topic is this relevant to?

21 MS. KERNS: I'm following up on his  
22 answer.

23 MS. WALSH: I don't agree.

24 A. Well, my answer is I don't know what he  
25 was referring to by that plan, so.

1 I'm sorry I can't be more helpful.

2 Q. Does the Department have any plans to  
3 address issues related to registration and voting by  
4 non-citizens?

5 MS. WALSH: Same objection. Again, we're  
6 here to talk about a request that was served back in  
7 2017 that didn't really relate to this issue. I  
8 don't see how this is relevant to any of the topics  
9 in your notice.

10 To the extent you're asking for something  
11 that might be protected by the deliberative process  
12 privilege, by the attorney-client privilege; those  
13 are my objections.

14 A. It's a broad question, so I'll give a  
15 broad answer.

16 The Department is always looking to  
17 improve, you know, whether it's, you know, accuracy  
18 of voting lists, whether it's improving upon the  
19 statutorily mandated voter list maintenance, whether  
20 it's improving, you know, voting systems themselves.  
21 I mean, we're always looking to improve our  
22 processes and improve the way we support the  
23 counties in conducting their statutorily required  
24 duties.

25 So I wouldn't -- you know, I would

1 describe it more as a mission than a plan. I mean  
2 that's an ongoing mission of the Department of  
3 State.

4 Q. Has the Department engaged any experts,  
5 other than experts engaged by the counsel, to assist  
6 with these efforts?

7 MS. WALSH: Objection; again, you're very  
8 far afield from the (30)(b)(6) notice and our  
9 objections. I'm not sure how this is relevant to  
10 any of the topics that we've agreed and offered to  
11 produce a witness on.

12 A. And I don't know what you mean by "these  
13 efforts"?

14 Q. You just testified that the Department is  
15 working on -- constantly working on modernization  
16 and improvement. So I'm asking has the Department  
17 itself engaged any outside experts? Or is that done  
18 internally?

19 MS. WALSH: Objection; outside the scope  
20 of the notice; far afield from the topics that  
21 brought us here today, and also note an objection to  
22 the form, and to the extent your question might  
23 delve into areas covered by the deliberative process  
24 and other privileges, including the attorney-client  
25 privilege.

1           A.     I mean I -- as part of our ongoing efforts  
2     to improve our processes, we would engage experts as  
3     necessary on any number of topics.

4           Q.     We were talking earlier about  
5     Commissioner -- Philadelphia Commissioner Al  
6     Schmidt.

7                     Do you know him personally?

8           A.     I do, yes.

9           Q.     And we talked a little bit earlier about  
10    some of the research that he has done in  
11    Philadelphia on non-citizen registration and voting.

12                    Are you familiar with the research that  
13    Commissioner Al Schmidt has done?

14                   MS. WALSH:  Objection to form.

15           A.     I, I, I am familiar with the information  
16    that he shared with the Department regarding his  
17    research, yes.

18           Q.     All right.  Well, when in the exhibit that  
19    we just looked at, Exhibit 13 was testimony at a  
20    December 12th, 2017 hearing.

21                   MS. WALSH:  Are you talking about Exhibit  
22    14?

23           Q.     I'm sorry.  You know what --

24           A.     Okay.

25           Q.     -- yes.  Sorry.  Exhibit 14.  I apologize.

1 Commissioner Schmidt also testified at  
2 that hearing. I don't have a transcript, but I do  
3 have a videotape of it. And, I'm going to play that  
4 and mark it as 15.

5 (Deposition Exhibit No. 15 marked for  
6 identification.)

7 MS. KERNS: There's a link to the full  
8 hearing of this video in paragraph 64 of our  
9 complaint. So we're going to pull that up.

10 MS. WALSH: Will the colloquy, whatever it  
11 is you're pulling up, be transcribed and be part of  
12 the record?

13 MS. KERNS: I think the Court Reporter can  
14 transcribe it, yes. I've done that in other  
15 depositions.

16 Q. So, this first clip, just for the record,  
17 runs from 59:03 seconds to 59:39 seconds.

18 Let me know when you can see that,  
19 Mr. Marks.

20 A. I can see it, yes.

21 Q. Okay.

22 A. Now, I can't.

23 Sorry.

24 I see it again.

25 (Video testimony of Commissioner

1 Al Schmidt.)

2 COMMISSIONER SCHMIDT: -- This last  
3 summer, in July, I reached out to  
4 Secretary Cortés in the Department of  
5 State, whom I have terrific respect  
6 for, and began a series of meetings  
7 throughout the summer, in July,  
8 August, and September, to bring the  
9 issue to their attention and then  
10 to bring to their attention sort of  
11 how we learned about how it was  
12 occurring.

13 So we basically found a problem  
14 where three quarters of the problem  
15 was caused by non-citizens getting  
16 driver's licenses and then being  
17 asked if they want to register to  
18 vote at PennDOT, at the very point  
19 in time they provided documentations  
20 showing that they're not citizens.

21 (End of video testimony.)

22 Q. Okay.

23 Mr. Marks, had you ever reviewed that  
24 testimony prior to today?

25 A. I'm certain I did; a long time ago, not

1 recently.

2 Q. And did the Department of State, in fact,  
3 have meetings with Commissioner Schmidt that July,  
4 August, and September?

5 A. I, I recall two meetings; one in July and  
6 one in September.

7 Q. Were you at those meetings?

8 A. I was at those two meetings, yes.

9 Q. Were they in person?

10 A. Yes.

11 Q. Were there in Harrisburg or at The  
12 Department of State? Or were they in Philadelphia?

13 A. They were in Harrisburg.

14 Q. Do you have notes from those meetings?

15 A. I do not, no.

16 Q. How long were the meetings?

17 A. I think the first meeting was longer than  
18 the second. My recollection is the first meeting  
19 may have been as long as an hour and a half, maybe  
20 closer to two hours; second meeting, my recollection  
21 is that it maybe was an hour.

22 Q. Did you take any notes at that meeting?

23 A. I did not take notes at either meeting,  
24 no.

25 Q. Did anyone take notes at the meeting?

1           A.    I don't recall if anyone took notes at the  
2 meeting.

3           Q.    Was there an agenda for the meeting?

4           A.    No.

5           Q.    How did you know what you were going to  
6 talk about, if there was no agenda?

7           A.    The first meeting, I didn't know what we  
8 were going to talk about. I, I do recall that  
9 Commissioner Schmidt had contacted Secretary Cortés  
10 indicating that he wanted to talk about, you know, a  
11 sensitive or serious matter with him. That's my  
12 recollection.

13          Q.    Who was at the meeting, the first meeting?

14          A.    Secretary Cortés was at the first meeting,  
15 Commissioner Schmidt and Deputy Commissioner Seth  
16 Bluestein from Philadelphia County. I was at the  
17 meeting. I believe we may have had someone from our  
18 Office of Chief Counsel at the meeting, and I can't  
19 recall if there was another person from the  
20 Department at the meeting.

21          Q.    And how about at the second meeting?

22          A.    The second meeting would have been the  
23 same individuals. I do, I do believe that  
24 definitely there was someone from our Office of  
25 Chief Counsel at that meeting, but in addition to



1 Commissioner -- Secretary Cortés, Commissioner  
2 Schmidt, Deputy Commissioner Bluestein, myself,  
3 there was also a Communications person from  
4 Philadelphia in attendance at that meeting.

5 Q. What do you mean by a "communications  
6 person"?

7 A. As I recall, she was described as, as  
8 someone from their, like, press or Press and  
9 Communications office, and I can't recall her name.

10 Q. And between the first meeting and the  
11 second meeting, was there any communication between  
12 the Department of State and Commissioner Schmidt?

13 A. I, I don't know if there was any  
14 communication between the Secretary Cortés and, and  
15 Commissioner Schmidt or any direct communication  
16 between the Department and Commissioner Schmidt.

17 Q. What was discussed at the first meeting?

18 A. I -- so my recollection is Commissioner  
19 Schmidt came to us with information indicating that  
20 they had started researching an issue that I believe  
21 was, was raised with their office by local advocacy  
22 groups, particularly groups who were representing  
23 clients who were seeking, seeking citizenship.

24 And, you know, as I recall, you know, they  
25 were raising concerns because they were finding out,

1 as they were working with these clients, that at  
2 some point in time those clients had registered to  
3 vote through a misunderstanding. And this was  
4 obviously causing an issue for them as they were  
5 attempting to, to get citizenship in the United  
6 States. And I think -- I believe that was the  
7 impetus for their, their research.

8 Q. Did Commissioner Schmidt bring anything to  
9 that first meeting as far as a report or documents?

10 A. I believe Commissioner Schmidt's Deputy  
11 Commissioner brought some examples of documents,  
12 perhaps, screen shots and maybe some letters from  
13 individual voters or provided on behalf of  
14 individual voters by, by either attorneys or some  
15 other caseworker that, that would have been  
16 representing their interests.

17 Q. And did you keep copies of whatever  
18 Commissioner Schmidt provided to you?

19 MS. WALSH: Objection to form.

20 A. I -- they were shown to us. I don't, I  
21 don't recall that we were actually given copies.

22 Q. And you used the word "inadvertent" again.  
23 Did you -- so are you saying that these  
24 individuals did not intend to register to vote?

25 A. Again, that, that is -- that's where

1 everything was pointing and that's how it was  
2 characterized by Commissioner Schmidt himself.

3 Q. So of those that were registered to vote,  
4 who actually had a voting history, did those people  
5 also not mean to actually vote?

6 MS. WALSH: Objection to form.

7 A. I -- you know, I'm not a -- you know, I'm  
8 not an attorney so I don't, I don't know where the  
9 line is with intent, but, again, you know -- it --  
10 everything -- all of the information that was  
11 available to us indicating that there was a  
12 misunderstanding, and they either believed that they  
13 were qualified to register and vote, or in, in the  
14 majority of cases, they didn't even realize that  
15 they were registering to vote, and, and took no  
16 action after that date, until they realized that  
17 they had inadvertently registered.

18 Q. Did the Department of State, at that first  
19 meeting, share any information with Commissioner  
20 Schmidt regarding analysis the Department of State  
21 was doing on the issue of non-citizens being  
22 registered to vote?

23 MS. WALSH: Objection to form.

24 A. No.

25 Q. Was the Department of State doing any

1 analysis at that time?

2 MS. WALSH: Objection to form.

3 A. No.

4 Q. And were there any follow-up e-mails or  
5 communications between that first meeting and the  
6 second meeting?

7 MS. WALSH: Objection to form.

8 A. I don't, I don't recall if there were any,  
9 any follow-up communications between the first and  
10 second meeting.

11 Q. Would you be able to search your e-mail to  
12 look for that?

13 MS. WALSH: Objection.

14 A. I --

15 MS. WALSH: The documents have been  
16 produced.

17 Q. So all of the follow-up communication has  
18 been produced?

19 MS. WALSH: Objection to form. You asked  
20 for communications. There were a couple of e-mails  
21 that have been produced.

22 A. Yeah. And I, I apologize if I'm getting  
23 the timeline wrong. You're asking if it was between  
24 the first and the second meeting. I don't recall,  
25 but any e-mails that I would have had with anyone in

1 Philadelphia County about this issue were turned  
2 over.

3 Q. So was Commissioner Schmidt, during that  
4 first meeting, only talking about a problem in  
5 Philadelphia County?

6 A. Yes. That's my recollection.

7 Q. And other than people coming in and  
8 reporting this issue, that they had registered to  
9 vote and didn't want to be registered, or an  
10 advocacy group coming in with them and saying that  
11 they wanted to be registered, had Commissioner  
12 Schmidt done any other analysis that he discussed  
13 with you at that meeting?

14 A. I, I, I don't believe so, no. I don't, I  
15 don't recall him doing any other analysis.

16 Q. At that first meeting, do you know about  
17 how many voter registrants Commissioner Schmidt  
18 believed were on the voter rolls, yet were not  
19 citizens?

20 MS. WALSH: Objection to form.

21 A. I believe what he provided to us was  
22 approximately 300 voters who had, who had reported  
23 to the county in one way or another.

24 Q. And at that second meeting, did he bring  
25 any more to your attention?

1           A.    I, I think by that second meeting, they  
2    had a -- had completed, as I recall, their, their  
3    own research and their own analysis, and it didn't  
4    turn out to be, you know, approximate, it was a  
5    little above 300 records that they had looked at and  
6    they had reviewed.

7           Q.    Did he explain to you how he conducted  
8    that analysis?

9           A.    I don't recall that he explained it in  
10   great detail, but my understanding is that the --  
11   that the, you know, county used records in its  
12   possession, you know, hard copy records in its  
13   possession to go back through to determine, you  
14   know, how this was reported to the counties, through  
15   whom it was reported which -- you know, which, you  
16   know, which county staff or which area of county  
17   voter registration office had processed, that they  
18   were looking into those details.

19          Q.    Now, we had previously talked -- it was in  
20   connection with Exhibit 11. We previously talked  
21   about Exhibit 11, which was correspondence from  
22   Pedro Cortés, and that was in 2016, and that  
23   referenced an analysis that the Department of State  
24   had been doing, including cooperating with the  
25   Pennsylvania Department of Transportation?

1 MS. WALSH: Are you referring to a  
2 particular place in Exhibit 11 that you would like  
3 the witness to refer to?

4 Q. On the document Bates-stamped 14.

5 A. Yes.

6 Q. That letter referenced that The Department  
7 was committed to working with the Pennsylvania  
8 Department of Transportation to modify the Motor  
9 Voter process?

10 A. That's correct.

11 Q. So by that point in time had the  
12 Department of State analyzed driver's license  
13 records, along with voter registration records?

14 MS. WALSH: Objection to form.

15 A. No.

16 Q. Has that ever happened?

17 MS. WALSH: Objection, to the extent  
18 you're asking about a privileged investigation  
19 conducted by an expert retained by counsel.

20 The witness is instructed not to answer.

21 MS. KERNS: Well, I'm asking if the  
22 Department has ever analyzed the Department of  
23 Transportation records, along with the voter  
24 registration records, to determine whether people  
25 were non-citizens.

1 MS. WALSH: You're asking about an  
2 analysis done internally within the Department of  
3 driver's license records. I similarly note an  
4 objection to the extent that driver's license  
5 records are protected from disclosure by federal and  
6 state law.

7 MS. KERNS: I'm not asking for the  
8 records. I'm asking if there was an analysis done.

9 MS. WALSH: Objection to form.

10 A. So when you're -- this sentence in this  
11 letter, "the Department believes" -- I'm sorry. "In  
12 close collaboration with PennDOT".

13 Is that the sentence you're referring to?

14 Q. That, and the sentence before it.

15 A. "In addition, the Department is committed  
16 to working with PennDOT" --

17 Q. Yes.

18 So at the top.

19 A. -"to modify the Motor Voter process to  
20 more prominently display the citizenship question."  
21 We did that.

22 "In close collaboration with PennDOT, the  
23 Department has reordered the screens that are  
24 displayed to users so that the citizenship  
25 requirement is a first screen." So we did



1 accomplish that.

2 And further, we also translated the Motor  
3 Voter screens into a dozen additional languages,  
4 beyond English and Spanish, that they were already  
5 translated to.

6 (Deposition Exhibit No. 16 marked for  
7 identification.)

8 Q. Okay.

9 So I'm going to move to my next exhibit.  
10 This is Exhibit 16.

11 We're going to put it up on the screen.

12 This exhibit is also a video clip of  
13 Commissioner Schmidt. It's from the same date and  
14 the same testimony. Again, the full video is  
15 available in the complaint, paragraph 64 of the  
16 complaint.

17 At this time --

18 (Video testimony of Commissioner  
19 Al Schmidt.)

20 COMMISSIONER SCHMIDT: Meaning the  
21 Department of State. The initial  
22 match of driver's license numbers  
23 with INS indicators to voter  
24 registration database records  
25 with driver's license numbers was

1           in excess of 100,000 in Pennsylvania.

2           (End of video testimony.)

3           Q.    Could you see and hear that, Mr. Marks?

4           A.    I could, yes.

5           Q.    So at that meeting -- and that was at  
6   1:3:37 to 1:3:57.

7           When he testified in front of the  
8   Department of State, Commissioner Schmidt referred  
9   to meetings. And he said, quote, "In our meetings  
10  with the Department of State, the initial match of  
11  driver's license numbers with INS indicators to  
12  voter registration database records with driver's  
13  license numbers was in excess of 100,000 in  
14  Pennsylvania."

15          Is that an analysis that Commissioner  
16  Schmidt performed?

17          MS. WALSH:  Objection to form.

18          A.    No.  I, I wouldn't call it an analysis,  
19  but, no, it is not -- that was not something  
20  Commissioner Schmidt performed.

21          Q.    If you wouldn't call it an "analysis",  
22  what would you call it?

23          A.    Well, I would call it what he called it.  
24  I don't, I don't entirely agree with his  
25  representation.  He said "match".  And what he was

1 referring to there is a match of records in  
2 PennDOT's database drivers' records to records in  
3 voter registration to determine if any of those  
4 records had an INS indicator on their PennDOT  
5 record.

6 Q. When was that initial match performed?

7 MS. WALSH: Objection to form.

8 A. My recollection is it would have been  
9 around September of 2017. It was, it was around the  
10 same window of time that we had had those two  
11 meetings with Commissioner Schmidt.

12 Q. Was that match discussed in the meetings  
13 with Commissioner Schmidt?

14 MS. WALSH: Same objection.

15 A. It, it was, yes, the second meeting.

16 Q. And who performed that initial match?

17 MS. WALSH: Objection to form.

18 A. That would have been the Department of  
19 Transportation and the Department of State.

20 Q. Okay.

21 But who, who did it? So there was a  
22 representative from the Department of State? How  
23 did they do it?

24 A. Yeah. I mean, we don't -- because,  
25 because PennDOT's records are protected under

1 federal law, we don't just have access to them. So  
2 to do anything like this, it has to be in  
3 collaboration with PennDOT.

4 Q. So how is it -- can you explain to me how  
5 it was done?

6 A. I did not do it, but I -- this was, this  
7 was -- as I said, I would not describe it as an  
8 analysis. This was a very high level, literally, a  
9 match to determine what is the universe of records  
10 that is our starting point, that we may need to look  
11 at.

12 And I'll, I'll point out at this point, an  
13 INS indicator, on PennDOT's database, doesn't mean  
14 the person's not a citizen. It doesn't even mean  
15 that the person was a non-citizen at any point in  
16 the past.

17 There are a variety of INS indicators on  
18 PennDOT records.

19 So it was really just identifying what is  
20 the universe of records, that would be our starting  
21 point, if we were going to do an analysis.

22 And, and we were clear with Commissioner  
23 Schmidt when, when we provided that information.

24 Q. Who, in your Department, performed the  
25 match?

1           A.    Again --

2                   MS. WALSH:  Objection to form.

3           A.    -- the match requires both agencies  
4 working together.  We don't have access to PennDOT's  
5 database.  So that would have been conducted by our  
6 Bureau of Elections, Security and Technology in  
7 conjunction with staff at the Department of  
8 Transportation.

9           Q.    Who, from your Bureau, worked on it on  
10 your side, on the Department of State's side?

11          A.    It would have been, it would have been  
12 Mike Moser, the Director of the Bureau of Election  
13 Security and Technology.

14          Q.    And were you physically present when this,  
15 when this was -- match was occurring?

16          A.    I was not, no.

17          Q.    And what happened as a result of this  
18 match?  Was a report generated?

19          A.    No, I don't believe a report was  
20 generated.  Again, it was a high-level match to  
21 determine what is the universe of records that we  
22 need to look at.  So I don't, I don't believe that a  
23 report was generated as part of that process.

24          Q.    Well, what was generated as a result of  
25 the match?

1 MS. WALSH: Objection.

2 Q. Was a list generated?

3 MS. WALSH: Objection to form.

4 A. I don't, I don't know if a list was  
5 generated. Certainly, there, there was information,  
6 when comparing the records in the two databases,  
7 that approximately 100,000 records appear to be a  
8 match.

9 And, you know, I should point out, too,  
10 even -- these are two completely different  
11 databases. So even, even the matching is not in  
12 every case a hundred percent. So this -- these were  
13 all caveats provided to Commissioner Schmidt at the  
14 time of the meeting. This was really just the  
15 universe of records that we would need to look at.  
16 It's just one very small step.

17 Q. So you have Mike Moser at the Bureau, and  
18 he, in conjunction with the Department of State,  
19 performs a match?

20 A. The Department of Transportation.

21 Q. Excuse me. The Department of  
22 Transportation performs a match?

23 A. Yes.

24 Q. So once, once these records are matched,  
25 again, was there a list generated? Or what did you

1 do with those matches?

2 MS. WALSH: Objection; asked and answered;  
3 mischaracterizes the testimony.

4 A. I, I don't know that a list was generated.

5 Q. Well, how do you know that there was --  
6 there were any matches?

7 A. Well, again, this was conducted -- I  
8 wasn't present. But this was a -- this was  
9 comparing records in one database against records in  
10 another database to determine, based on certain  
11 criteria, if there appeared to be matches between  
12 the two databases. And then from there, to  
13 determine if on, on the Department of  
14 Transportation's side, if any of those potential  
15 matches had an INS indicator on them, and, and what  
16 that total number was.

17 So I don't, I don't know what -- you know,  
18 I don't know what was generated by doing those  
19 queries of the system of two completely separate  
20 systems.

21 Q. Was anything generated?

22 MS. WALSH: Objection; asked and answered.

23 A. I don't know if anything was generated.

24 Q. How did you know that a record matched?

25 MS. WALSH: Objection to form;

1 mischaracterizes the testimony.

2 A. Well, again, we, we would have provided  
3 PennDOT with voter registration records for the  
4 entire Commonwealth, and then that would be used to  
5 match against -- based on criteria, to determine if  
6 they were, you know, potentially the same person  
7 were used to match against PennDOT's database to  
8 determine, you know, what the, what the number of  
9 potential matches were, and then from there, to  
10 determine how many of those had an INS indicator on  
11 the record.

12 Q. What was the number of potential matches?

13 A. It was 100,000. Or I mean, you're talking  
14 about potential matches just broadly between the two  
15 systems?

16 Q. Yes.

17 MS. WALSH: Note an objection to the form  
18 of the question.

19 A. I don't know that that was even part of  
20 the match, but I would expect that -- yeah, I mean  
21 I'm not going to guess at what that number may be.

22 Q. Well, you just used the number 100,000.  
23 What was 100,000?

24 A. Well, a hundred thousand is -- as  
25 Commissioner Schmidt testified to, a hundred



1 thousand was the number of records that may have  
2 matched between the voter registration, the SURE  
3 database and PennDOT's motor vehicle records that  
4 had an INS indicator on the motor vehicle record.

5 Q. So what data was matched between the voter  
6 registration record and the driver's license record?  
7 The names and addresses in the voter registration  
8 record were matched with the driver's license  
9 record, and any of those that matched, and had an  
10 INS indicator, that was the match you were looking  
11 for?

12 MS. WALSH: Objection to form.

13 A. Correct.

14 MS. WALSH: I think you're  
15 mischaracterizing the testimony.

16 A. Yeah. We were looking for -- of, of the  
17 records maintained in the voter registration  
18 database as compared to PennDOT's motor vehicle  
19 records how many individuals, who may be the same  
20 person, and even that's not a guarantee in such a  
21 high-level match, but how many of those on their  
22 motor vehicle record had an INS indicator.

23 Q. And you -- just so I'm clear, you  
24 testified that that initial match, the number was  
25 about a hundred thousand?

1 MS. WALSH: Objection to form; also  
2 mischaracterizes the testimony.

3 A. Yes. A hundred thousand records that  
4 would -- and, again, we were abundantly clear with  
5 Commissioner Schmidt that only was indicative of the  
6 number of records that we would have to examine. It  
7 was not at all indicative of the number of -- it's  
8 not even indicative of the number of people who  
9 match a hundred percent between the two databases.

10 Q. Well --

11 A. It's certainly not indicative of the  
12 number of the non-citizens who may be registered to  
13 vote.

14 Q. Well, let's focus on the process.

15 So Mike Moser, in this process, gets to  
16 the point where there's approximately a hundred  
17 thousand matches between the voter registration  
18 database and the driver's license database with the  
19 INS indicator.

20 What did he do next?

21 MS. WALSH: Objection to form.

22 A. Well, that was the end of it. I mean  
23 that, that was the purpose of the match, was to  
24 determine the number of records that would need to  
25 be, be examined.

1 Q. Well, let's talk first exactly what was  
2 matched between the voter registration database and  
3 the driver's license database.

4 Were names matched?

5 MS. WALSH: Objection; these questions  
6 have been asked and answered.

7 A. Yeah. I mean I can't speak for PennDOT's  
8 side at all, but, certainly, to do a match, you  
9 would need to match name, date of birth, and any  
10 other personal identifying information that you may  
11 have.

12 Q. And on the Department of State's end, on  
13 the voter registration database, you have name, date  
14 of birth.

15 Do you have driver's license numbers in  
16 the, in the voter registration database?

17 MS. WALSH: Objection to form.

18 A. For --

19 MS. WALSH: Also, objection to the extent  
20 you're asking for information that's privileged and  
21 protected from disclosure. It's derived from the  
22 driver's license record.

23 Q. I'm not asking for a driver's license  
24 record. I'm trying to, I'm trying to -- I just want  
25 to understand what happened here.

1           You have records at the Department of  
2     State in the SURE system, and some of those records  
3     have driver's license numbers. Some of the voter  
4     registration records have driver's license numbers  
5     attached to them; correct?

6           A.     Correct.

7           Q.     And some of them don't?

8           A.     Correct.

9           Q.     And why would there not be a driver's  
10    license record attached to a voter registration  
11    record?

12           MS. WALSH: Objection to form.

13           A.     Well, there's more than one reason. A  
14    registered voter may not have a driver's license,  
15    the most obvious reason.

16           The registered voter may have registered  
17    before driver's license -- before the Health America  
18    Vote Act and before Act 3 of 2002, a registered  
19    voter may have provided the last four digits of  
20    their social security number as opposed to driver's  
21    license numbers. Those are three reasons.

22           Q.     And was this a -- when Mike Moser  
23    performed this match, can you tell me what data  
24    points he was looking to match?

25           A.     And, again, you're --

1 MS. WALSH: Object to the form and you're  
2 mischaracterizing the testimony, and these questions  
3 have been asked and answered.

4 A. Yeah. I want to be clear. Mike Moser did  
5 not perform the match.

6 Q. Oh. Who performed the match?

7 A. The match was performed between the  
8 Department of State and the Department of  
9 Transportation. No one person can do such a match.

10 The only way that we could conduct this  
11 match was to work closely with the Department of  
12 Transportation and use data contained in their motor  
13 vehicle database. You can't -- no one person has  
14 access to those two sources, and certainly not  
15 anyone at the Department of State.

16 So I want to be clear, when you  
17 characterize it as Mike Moser doing the match,  
18 that's not what happened.

19 Q. Okay.

20 Then explain to me what happened, because  
21 I'm still not clear.

22 MS. WALSH: Objection; asked and answered.

23 A. Mike Moser represented the Department of  
24 State in this match. Staff at the Department of  
25 Transportation was on the other side.

1           This match occurred between the two  
2 departments. It was a collaborative effort.

3           So it's inaccurate to say Mike Moser  
4 performed the match. It would be more accurate to  
5 say that the two agencies conducted a match of their  
6 two databases.

7           Q. And I'm asking just procedurally how that  
8 was done. Was another software program used where  
9 data was uploaded looking for matches? Or were they  
10 merged --

11           MS. WALSH: Objection to form.

12           Q. -- and you looked for matches? I don't  
13 understand the mechanics.

14           A. The mechanics are we provide the voter  
15 registration data, the Department of Transportation  
16 matches it against their records.

17           Q. Right.

18           Okay.

19           Now we're getting somewhere.

20           So you provided -- and what was on the  
21 list that you provided as far as the data points?  
22 Did you provide that everything in the SURE system  
23 would be --

24           A. Looking at the name, date of birth,  
25 address, I believe. So it would be, it would be

1 anything that would be useful on the, on the voter  
2 registration record.

3 Q. Okay.

4 And do you know, do you know if this --  
5 was it, like, downloaded into an Excel spreadsheet?  
6 Or what software program --

7 A. I don't think you could download that many  
8 records. I mean we're turning over the entire  
9 data. It's basically, like, the Full Voter Export.  
10 You're talking about millions of records that would  
11 have been provided.

12 How PennDOT, you know, pulled them in to  
13 do their side of it, I, I don't know, but it -- I  
14 don't expect that it was an Excel spreadsheet.

15 Q. So the actual match part was done on the  
16 PennDOT side, not on the Department of State's side?

17 MS. WALSH: Objection to form.

18 A. Yeah. It -- you know, the Department of  
19 Transportation's records are protected. So, you  
20 know, this -- it made more sense for us to provide  
21 information to them, that they could, then, use to  
22 conduct the matching.

23 Q. And when this process was occurring, did  
24 the Department of State establish what data points  
25 had to match for it to be considered a match?

1                   And I can give you an example.

2           A.     Yeah. I mean, I mean the minimum to  
3     consider a match would be, you know, first name,  
4     last name, date of birth. If you had a driver's  
5     license or the last four of SSN, that would be  
6     preferable to establish a match. You know, if you  
7     had a different middle name, that would not be a  
8     match. I mean, they're pretty, you know, pretty  
9     well-established criteria. And even that's not a  
10    100 percent guarantee.

11          Q.     Now, once the Department -- once the  
12    Department of Transportation performed that match,  
13    the result was that there was a universe of records  
14    of registered voters who also had that INS  
15    indicator; correct?

16               MS. WALSH: Objection to form.

17          A.     I -- it was a, it was a number of records  
18    that appeared to match between the two databases,  
19    that, in PennDOT's database, had an INS indicator on  
20    the record.

21          Q.     All right.

22                Then what happened next? Did the  
23    Department of Transportation person pick up the  
24    phone and call you and say, "This is how many we  
25    found." Or was a list generated?



1 MS. WALSH: Objection; asked and answered.

2 A. Yeah. I don't, I don't know that a list  
3 was generated. I do know that the number was  
4 communicated to the Department of State.

5 Q. Do you know who it was communicated to at  
6 the Department of State?

7 A. I, I believe it would have been Mike  
8 Moser.

9 Q. And then what did Mike Moser do with that  
10 information?

11 A. Well, he provided me and Secretary Cortés  
12 with, with the, with the number.

13 Q. And then what did you do with the number?  
14 Or what did Secretary Cortés do with the number, if  
15 the answer is different?

16 A. Well, in our subsequent meeting, that's  
17 when we told Commissioner Schmidt that that was the  
18 universe of the records that we would need to  
19 further analyze.

20 Q. And so, other than Commissioner Schmidt,  
21 did you or Secretary Cortés or anyone from the  
22 Department of State tell anyone else about this  
23 match?

24 MS. WALSH: Objection to form.

25 A. No.

1 Q. Was this number shared with anyone else in  
2 the Department of State?

3 A. I don't believe that it was, no.

4 Q. And what did you do next with regard to  
5 the match?

6 MS. WALSH: Objection to form.

7 A. Well, I think, I think at that point in  
8 time, Commissioner Schmidt had -- you know, in spite  
9 of our warnings that this number did not indicate in  
10 any way the potential number of non-citizens that  
11 may be registered to vote, he testified before the  
12 Senate State Government Committee and put that  
13 number out there.

14 Q. Right.

15 But my question was what did you do or  
16 what did Secretary Cortés do?

17 A. Well, at that point, you know, the number  
18 was out there, and we were, we were trying to  
19 explain that the match was really to just get an  
20 idea of what universe of records we may need to look  
21 at.

22 Subsequent to all of this, then we engaged  
23 our Office of Chief Counsel to conduct --

24 MS. WALSH: I'm instructing you not to get  
25 into privileged areas.

1 THE WITNESS: Okay.

2 MS. WALSH: So you shouldn't discuss what  
3 you discussed with the Office of Chief Counsel.

4 Q. Then -- so what happened next?

5 MS. WALSH: Objection; he's answered that  
6 several times.

7 Q. So then you spoke to your counsel. That's  
8 the answer?

9 A. Well, no. The answer is then Commissioner  
10 Schmidt, despite our warnings, mentioned the 100,000  
11 number in the Senate State Government Committee  
12 hearing.

13 Q. And after that, did the Department of  
14 State itself, without counsel, undertake any  
15 analysis?

16 A. No.

17 Q. All right. I'm going to pull up the next  
18 exhibit, Exhibit 17.

19 MS. WALSH: Is this a good place for a  
20 five-minute break?

21 MS. KERNS: Sure.

22 MS. WALSH: Thank you.

23 (Whereupon, there was a recess in  
24 proceedings.)

25 (Deposition Exhibit No. 17 marked for

1 identification.)

2 MS. KERNS: We're going to put up on the  
3 screen Exhibit 17. And this is the -- it's  
4 Bates-stamped D215 through D226. And the document  
5 is entitled "Statement Voter Registration and  
6 Election Integrity."

7 Q. Are you familiar with this document?

8 A. I don't, I don't have it up in front of me  
9 yet.

10 Q. Okay.

11 Let me know when you can see it.

12 A. I can see it.

13 Q. Are you familiar with this document?

14 A. Yes. That document looks familiar.

15 Q. Do you know who authored it?

16 A. I don't know if you can scroll to the  
17 bottom of this.

18 I believe it may have been a statement  
19 from our Communications office.

20 Q. All right.

21 In the -- on the first page in the first  
22 bullet point, it says "The department retained an  
23 expert to conduct a full analysis of registration  
24 data by comparing the voter rolls with other  
25 available state databases."

1 Do you know when that full analysis  
2 occurred?

3 MS. WALSH: I just note an objection, and  
4 also to the extent you're asking him about  
5 privileged attorney work product or privileged  
6 attorney communications.

7 A. Yeah. I mean this an analysis that was  
8 conducted by our Office of Chief Counsel with, with  
9 an expert, and I believe the analysis took --

10 MS. WALSH: I'm going to instruct you not  
11 to answer and disclose any information about the  
12 privileged analysis or privileged attorney work  
13 product investigation.

14 Q. When you refer to the "Office of Chief  
15 Counsel", are you referring to the Office of Chief  
16 Counsel of the Department of State?

17 A. The Office of Chief Counsel is, as I  
18 understand it, I'm not, I'm not one of the attorneys  
19 at the Department, but as I understand it, the  
20 Office of Chief Counsel is actually part of the  
21 Office of General Counsel, and they are assigned to  
22 the Department of State as, as counsel.

23 Q. And do you know who this expert is?

24 MS. WALSH: Objection; asked and answered.

25 A. Yes, as I said, several hours ago, no.

1 Q. So who do you, who do you work with at the  
2 Office of Chief Counsel? Are there specific  
3 attorneys that you work with?

4 A. There are, yes.

5 Q. And are they considered part of the  
6 Department of State?

7 MS. WALSH: Objection to form.

8 A. No. Again, I'm not -- my understanding is  
9 they are -- they actually work for the Office of  
10 General Counsel, and they are assigned to the  
11 Department of State. And this is true of other  
12 state agencies. They're assigned to specific  
13 agencies.

14 MS. WALSH: So the witness has received a  
15 paper copy of Exhibit 17.

16 MS. KERNS: Okay.

17 Thank you.

18 Q. On Exhibit 17 where it says "The  
19 Department retained an expert." It's the first  
20 bullet point. That first bullet point also  
21 indicates "the initial analysis yielded a  
22 responsible list of individuals for whom voter  
23 registration status required further" information  
24 {verbatim).

25 A. Further confirmation.

1 Q. -- "confirmation". Sorry.

2 A. Yes.

3 Q. So was the Department of State provided  
4 with that list?

5 MS. WALSH: Objection; mischaracterizes  
6 the document. And the witness is not going to  
7 answer questions about the privileged work product  
8 performed by the expert.

9 MS. KERNS: I'm going to have to ask you  
10 to put on the record what exactly, what exactly are  
11 you saying is privileged?

12 MS. WALSH: You're saying that the  
13 Department retained counsel, who retained an expert,  
14 and the results of that analysis and investigation  
15 conducted by the expert, communications with the  
16 expert are privileged, attorney work product and  
17 attorney-client communications.

18 MS. KERNS: Under what authority are you  
19 claiming it's privileged?

20 MS. WALSH: Under the attorney-client  
21 privilege and the work-product doctrine.

22 MS. KERNS: So -- no. I need you to  
23 explain this to me, because it doesn't sound like  
24 the Department was seeking legal advice.

25 It sounds like that an expert was

1 retained, and this, this press release says "by the  
2 Department". So I don't understand how that can be  
3 considered privileged or, or attorney work product  
4 because no one is talking about legal advice here.

5 MS. WALSH: I'm not going to engage with  
6 you in a debate on this during this deposition. The  
7 witness is here to answer factual questions. I will  
8 place my objection on the record.

9 The witness has testified that the  
10 Department ed consulted with counsel. There's been  
11 testimony and evidence in the case, and  
12 representations in the case, that counsel retained  
13 an expert.

14 Our position is that that engagement is  
15 protected by the attorney-client privilege and under  
16 the attorney work-product doctrine. And it's not  
17 something that's appropriate for discovery, and it's  
18 not something that's discoverable or able to be  
19 disclosed under the NVRA.

20 Ms. Kerns, again, I'm happy to engage with  
21 you on that point and I'm happy to debate with you.  
22 It's not the place for it right now.

23 The witness is here to answer questions  
24 about factual issues that are appropriate. And we  
25 contend that this one is not. This subject is not



1 appropriate for discovery.

2 Q. Was the expert an attorney?

3 A. I don't know.

4 Q. Was the expert providing legal advice?

5 MS. WALSH: Objection. The witness has  
6 told you he doesn't know the expert.

7 Q. Was the expert --

8 MS. KERNS: He didn't, he didn't answer.  
9 Was the expert providing legal advice?

10 MS. WALSH: I'm noting an objection. I'm  
11 putting an objection on the record that you're  
12 delving into an area that we contend is privileged.  
13 The witness is not going to answer questions about  
14 communications involving the expert.

15 MS. KERNS: So it's your position that if  
16 the Department simply -- if the Department of State  
17 wants to keep something shrouded in secrecy, all  
18 they have to do is have the Office of Chief Counsel  
19 conduct it, even if it has nothing to do with legal  
20 advice?

21 Is that your position?

22 MS. WALSH: I'm not sure who you're asking  
23 that question of. If it's me, the answer is no. We  
24 placed -- I told you already. We told you several  
25 times what our position is, and we contend that this

1 investigation, this analysis, these communications  
2 with this expert are covered by the attorney-client  
3 privilege and by the attorney work-product doctrine.  
4 It's not an appropriate subject for discovery, and  
5 this witness won't be answering questions about  
6 that.

7 Q. Mr. Marks, was Exhibit 17 made available  
8 to the public?

9 A. You're referring to this exhibit here?  
10 This statement?

11 Q. Yeah. Oh, I'm sorry. It doesn't have a  
12 number on it.

13 Yes. "Statement - Voter Registration and  
14 Election Integrity".

15 A. Yes, I believe it was. I think.

16 Q. So if the material is privileged, why did  
17 the Department retain an expert and make that -- the  
18 fact that the Department retained an expert to  
19 conduct a full analysis available to the public?

20 MS. WALSH: Objection to form. I think  
21 you're mischaracterizing the testimony and what this  
22 document says.

23 The fact that an expert was disclosed, and  
24 that it's identified in this document, does not make  
25 the analysis unprivileged. It doesn't waive the

1 privilege. It doesn't make the privilege go away.

2 Q. So, Mr. Marks, is it your position that  
3 the Department is not going to reveal to the public  
4 who this expert was?

5 MS. WALSH: Objection.

6 I told you several times. The identity of  
7 the expert is a privileged matter. It's not  
8 something that's required to be disclosed. And the  
9 witness isn't here today -- he won't be answering  
10 any questions that are covered by this privileged  
11 matter -- that are subject to the privilege of the  
12 work-product doctrine, and your question is  
13 argumentative, and I believe it is inappropriate.

14 Q. What is the definition of an expert? What  
15 would the qualifications be for an expert to conduct  
16 an analysis of registration data, Mr. Marks?

17 MS. WALSH: Objection. Objection. You're  
18 calling for, you're calling for legal conclusions.  
19 You're asking hypothetical questions, and the  
20 witness is not going to answer about these  
21 investigations and the entirety of the expert that's  
22 the subject -- that is referenced in this document.

23 MS. KERNS: Okay.

24 Ms. Walsh, I just want you to clarify.  
25 Are you saying that the identity of an expert is

1 protected by a privilege?

2 MS. WALSH: Yes. The identity of a  
3 consulting expert, that is not a testifying expert,  
4 is protected. And, again, I'm happy to debate this  
5 with you in another forum, in a more appropriate  
6 forum. The witness is here today to answer  
7 appropriate factual questions.

8 MS. KERNS: So the privilege you're saying  
9 that if the Department hires any expert, if the  
10 Office of Chief Counsel hires any expert that is  
11 automatically covered by a privilege?

12 MS. WALSH: My position is the expert  
13 retained in this matter is that it's privileged  
14 matter. It's covered by the attorney-client  
15 privilege and the work-product doctrine. And it's  
16 not something that's an appropriate subject for  
17 discovery.

18 If you want to have a theoretical debate  
19 about other experts and other circumstances, I'm  
20 happy to do that, but this isn't the time or the  
21 place for it. I suggest you get back to your  
22 30(b)(6) topics, the ones that we didn't object to,  
23 and ask the witness factual questions.

24 MS. KERNS: When you say "this matter",  
25 are you talking about the investigation -- the full

1 analysis of registration data? Or are you talking  
2 about litigation?

3 MS. WALSH: I'm talking about your  
4 questions, asking this witness about this expert  
5 analysis that we contend is privileged and protected  
6 from disclosure.

7 MS. KERNS: Why don't we to go to, why  
8 don't we go to the next exhibit, Exhibit 18.

9 And you're not going to be able to print  
10 this one out because it is a lot of pages.

11 A. So I'm going to put it up on the screen,  
12 and let me know when you can see that, Mr. Marks.

13 MS. WALSH: Is there a Bates number  
14 associated with the document?

15 MS. KERNS: It is Bates-stamped PILF  
16 001360 through 1551. I'm going to mark this as  
17 Exhibit 18. It's a copy of the December 2019  
18 Pennsylvania Auditor General's Performance Audit  
19 Report.

20 (Deposition Exhibit No. 18 marked for  
21 identification.)

22 Q. Can you see it, Mr. Marks?

23 A. Not yet. No. I'm working on it.

24 Q. Let me know when you can see it, Mr.  
25 Marks.

1 Is it up there, Mr. Marks?

2 A. No. We're --

3 Q. Okay.

4 It will take some time.

5 A. We're bringing it up.

6 All right.

7 I can see it now.

8 Q. Okay.

9 So this is Exhibit 18. It is the  
10 Performance Audit Report. It's authored by Eugene  
11 A. DePasquale, Auditor General, and it's dated  
12 December 2019.

13 Have you ever seen this document before?

14 A. I have, yes.

15 Q. Have you read the document?

16 A. I have.

17 Q. All right.

18 I'm going to now move the screen to  
19 Bates-stamped 01529. It's actually page 162 of the  
20 report.

21 Let me know when you can see that.

22 A. 1529. Did you say 01529?

23 Q. 01529 is the Bates stamp at the bottom.

24 Yeah. At the top of the page, it says -- it has the  
25 header "Performance Audit", and the first line says

1 "Registration Application to DOS."

2 Can you see that?

3 MS. WALSH: We're not there yet.

4 A. Okay.

5 I think, I think this is it. A

6 Performance Audit. Pennsylvania Department of State

7 Statewide Uniform Registry of Electors.

8 Q. Right.

9 A. It looks like it's start in the middle of  
10 a paragraph. "Registration Applications to DOS"?

11 Q. Right.

12 So I'm going to ask you to go down to the  
13 second full paragraph that starts "In addition to  
14 working with PennDOT."

15 Do you see that paragraph?

16 A. Yes.

17 Q. All right.

18 So the second sentence states "DOS" --  
19 which I think you'd would agree is the Department of  
20 State -- "management stated that they retained an  
21 expert, a tenured Associate Professor of Political  
22 Science, to conduct an analysis by comparing the  
23 Commonwealth's voter registration data with other  
24 available Commonwealth databases."

25 A. Correct.

1 Q. Do you know the name of that tenured  
2 Associate Professor of Political Science?

3 MS. WALSH: Objection; asked and answered.

4 A. I do not, no.

5 Q. Did the Department of State share that  
6 information with the Auditor General?

7 MS. WALSH: Objection.

8 A. I, I don't believe so.

9 Q. Do you know where this Associate Professor  
10 is tenured?

11 A. I do not.

12 Q. Is this the same expert that was  
13 referenced in the previous exhibit?

14 MS. WALSH: Note an objection to the form.  
15 And, again, the witness has told you several times  
16 he doesn't know who the expert was. He told you  
17 that in response to your question about the earlier  
18 exhibit. He told you that in response to your  
19 questions about this exhibit. Objection; the  
20 question has been asked and answered several times.

21 Q. This paragraph, Mr. Marks, the second full  
22 sentence says "DOS management".

23 Who is DOS management?

24 MS. WALSH: Objection to form.

25 A. I believe -- I can't answer for the



1 Auditor General, but I believe the Auditor General  
2 was referring to the Department of State's executive  
3 staff.

4 Q. So does the Department of State executive  
5 staff know who the tenured professor is?

6 MS. WALSH: Objection. Again, our  
7 position is that the identity of the expert is a  
8 privileged matter. I think your questioning is  
9 inappropriate. I don't think it's appropriate to  
10 ask you know, what this witness believes other  
11 people would know about this privileged matter.  
12 It's not something he's going to ask answer  
13 questions about today.

14 Q. The third sentence says that "We requested  
15 information from Department of State regarding what  
16 Commonwealth databases were used for the analysis  
17 and the results of the analysis; however, the  
18 Department of State would not provide this  
19 information."

20 Do you know why the Department of State  
21 declined to provide this information?

22 MS. WALSH: Objection; objection to form,  
23 and to the extent you're asking about, you know,  
24 you're delving into privileged matters.

25 I told you several times you've asserted

1 in this case that this was a privileged analysis.  
2 It was covered by privileged -- the attorney-client  
3 privilege and it's privileged attorney-work product.

4 Q. Mr. Marks, in that same paragraph, on the  
5 exhibit that's up on your screen, in that paragraph  
6 that starts, "in addition to working with PennDOT,"  
7 it says that the tenured Associate Professor -- it  
8 says a tenured Associated Professor of Political  
9 Science to conduct an analysis by comparing the  
10 Commonwealth's voter registration data with other  
11 available Commonwealth databases.

12 Do you know what the other available  
13 Commonwealth databases were?

14 MS. WALSH: Objection; asked and answered,  
15 and, again, you're getting into an area that's  
16 protected from discovery by the attorney-client  
17 privilege and the attorney work-product doctrine.

18 Q. Do you know what the other available  
19 Commonwealth databases were, Mr. Marks?

20 MS. WALSH: I instruct the witness not to  
21 answer the question about the privileged  
22 investigation and analysis.

23 Q. I am going back to the previous exhibit,  
24 Exhibit 17, which was the Statement on Voter  
25 Registration and Election Integrity.

1                   Do you have that in front of you? We  
2 marked that as 17.

3           A.     I do, yes.

4           Q.     And here The Department of State uses that  
5 language "other available state databases".

6                   Is this referencing the same expert and  
7 the same analysis as in the Auditor General's  
8 Report?

9                   MS. WALSH: I just note an objection. I  
10 think the question has been asked and answered.

11          A.     Yes, I believe it does.

12          Q.     And do you know if other databases were  
13 used, other than state databases? Were any  
14 commercial databases used?

15                  MS. WALSH: Objection. The witness isn't  
16 here to testify about matters that are protected by  
17 the attorney-client privilege and by the attorney  
18 work-product doctrine. What the expert did, what  
19 the expert analyzed, the specifics of it, are  
20 matters that are not appropriate for discovery.

21          Q.     Mr. Marks, in Exhibit 17, which I think  
22 you have in front of you. I think you're holding  
23 that. The statement.

24          A.     I have it, yes.

25          Q.     Okay.

1                   Good.

2                   In that first bullet point, it says "The  
3                   initial analysis yielded a responsible list of  
4                   individuals for whom voter registration status  
5                   required further confirmation."

6                   Can you tell me what it means by "a  
7                   responsible list"? Like, what's the definition of  
8                   "a responsible list"?

9                   A. I think a responsible list is one that is  
10                  done -- it's the opposite, I guess, the best way to  
11                  describe it, the match that was done between voter  
12                  registration database with the PennDOT database.

13                 Q. And does the Department of State have that  
14                  responsible list in its possession?

15                 MS. WALSH: Objection. Again, you're  
16                  getting into an area that's protected from  
17                  disclosure by the attorney-client privilege and the  
18                  work-product doctrine. And this is a product of an  
19                  expert analysis, and this expert was retained by  
20                  counsel.

21                 Q. Mr. Marks, does the Department of State  
22                  have that list in its possession?

23                 MS. WALSH: Same objection. I instruct  
24                  the witness not to answer questions about this  
25                  expert analysis.

1           Q.    Mr. Marks, would you consider this  
2 analysis part of list maintenance activities?

3           A.    No.

4           Q.    Do you know why the Department would --  
5 somebody decided that this list required further  
6 confirmation?

7                   MS. WALSH: Again, if you can answer the  
8 question without disclosing privileged  
9 communications -- or discussing or not disclosing  
10 any part of the expert analysis, you can do so.

11          A.    Any data analysis, no matter how robust,  
12 would provide potential -- you know, potential  
13 records, but it wouldn't be 100 percent. There's no  
14 guarantee that it would be a hundred percent  
15 accurate. So it would require further confirmation.

16          Q.    Who performed that further confirmation?

17          A.    I believe if you go on and read the  
18 remaining bullet points, I think it describes how  
19 the Department proceeded with the mailing of letters  
20 to, to the registrants, and then the subsequent  
21 action that was taken.

22          Q.    No.

23                   The question was who, who decided what  
24 required further confirmation in that first bullet  
25 point?

1 MS. WALSH: Objection; again, you're  
2 getting into -- you're asking specifically about a  
3 privileged analysis conducted by an expert retained  
4 by counsel protected by the attorney-client  
5 privilege and the work-product doctrines.

6 Your question was really what happened  
7 next. The witness answered that question. He said  
8 the answer is contained in the rest of this  
9 document. Letters were sent out, and it described  
10 actions that were taken.

11 Q. Mr. Marks, how did the Department  
12 determine that those 7,702 registrants needed to  
13 receive letters?

14 MS. WALSH: Objection; you're asking about  
15 the privileged analysis. You're asking about the  
16 privileged investigation that was done by an expert  
17 retained by counsel.

18 MS. KERNS: Okay.

19 What I'm seeking is the, the name of the  
20 expert, the methodology, the analysis that was  
21 performed, the result of the analysis, what was done  
22 with that analysis, and how the Department of State  
23 reached the conclusion that 7,702 registrants were  
24 going to get letters.

25 So if you're going to continue to object,

1 I understand that, but I want to make clear that  
2 that's what I'm seeking, and I'm going to have to  
3 file a Motion to Compel on those issues.

4 MS. WALSH: You've asked those questions,  
5 and to some of those questions, the witness has told  
6 you he doesn't know the answer. And we've taken the  
7 position, and I've objected appropriately, I  
8 believe, to your questions asking about the details  
9 of this relationship with an expert and the work  
10 that was done by the expert under the  
11 attorney-client privilege and at the direction of  
12 counsel. And, again, we contend that that  
13 information is privileged and is not an appropriate  
14 subject for discovery.

15 Q. Mr. Marks, whose decision was it that the  
16 office of counsel would retain the expert rather  
17 than the Department of State?

18 MS. WALSH: Objection. You're asking for  
19 privileged communications.

20 Q. If you go to the third bullet on  
21 Exhibit 17, which we're still talking about,  
22 there -- that third bullet indicates that based on  
23 further expert analysis the Department mailed  
24 letters to one thousand -- excuse me, 11,198  
25 registrants.

1           Are those 11,198 registrants in addition  
2     to the 7,702 registrants described in the previous  
3     bullet point?

4           A.     No. They would be inclusive of the 7,702.

5           Q.     So if you look at those bullet points,  
6     prior to the May 2018 primary, the Department mailed  
7     letters to 7,702 registrants.

8           Then there was further expert analysis,  
9     and the Department mailed letters to 11,198  
10    registrants on June 12th, which would have been over  
11    a month letter.

12           So did those 7,702 people get additional  
13    letters, and that's why you're including them in the  
14    11,198?

15           MS. WALSH: Objection to form. I think  
16    you're mischaracterizing what this document says.

17           A.     Yes. That the 7,702 is part of the  
18    11,198; so 7,702 would have received both letters.

19           Q.     Who determined that further expert  
20    analysis was needed?

21           MS. WALSH: Objection. You're calling for  
22    information that's protected from disclosure by the  
23    attorney-client privilege and work-product doctrine.

24           Q.     Are you okay, Mr. Marks?

25           A.     I am, yes. Being inside all day, the heat



1 starts to get to me.

2 (Deposition Exhibit No. 20 marked for  
3 identification.)

4 Q. Okay. I'm going to go to Exhibit 20.  
5 Can you see that, Mr. Marks?

6 A. We're working on it.

7 MS. WALSH: Is there a Bates number?

8 MS. KERNS: Yes. It is number one -- it  
9 starts with 190.

10 I'm having -- I'm going to go off the  
11 record for just two or three minutes. Okay.

12 MS. WALSH: Sure.

13 (Whereupon, there as a recess in the  
14 proceedings.)

15 (Deposition Exhibit No. 19 and Deposition  
16 Exhibit No. 20 marked for identification.)

17 BY MS. KERNS:

18 Q. Okay.

19 I apologize. I skipped an exhibit, by  
20 accident. It's Exhibit 19. We're going to put it  
21 up on the screen. It's Bates-stamped D186.

22 Mr. Marks, can you see that?

23 A. I'm working on it.

24 Yes.

25 Q. Was this the letter that the 7,702 people

1 received?

2 A. Let me look at this to see if we can  
3 confirm. Go back up to the top again. I just want  
4 to look at the date again.

5 Yes.

6 Q. And did any of the recipients respond to  
7 this letter?

8 A. I don't recall that any of the recipients  
9 responded to the -- to this letter, no.

10 Q. Okay.

11 So if we go back to Exhibit 17, which was  
12 the Statement - Voter Registration and Election  
13 Integrity, that indicated based on further expert  
14 analysis, after that initial letter went out, the  
15 Department mailed letters to 11,198 individuals.

16 A. That's correct, yes.

17 Q. And now I'm going to put up Exhibit 20,  
18 which is -- I referred to previously. It's  
19 Bates-stamped D190 through D198.

20 Let me know when you can see it.

21 A. Okay.

22 We have it up now.

23 Q. Is -- Exhibit 20, that's in front of you,  
24 is that the letter that went out to the 11,198  
25 people?

1 A. Let me scroll through this.

2 Yes.

3 Q. And did the Department receive any  
4 responses to this letter?

5 A. We did, yes.

6 Q. And was there a list kept of the  
7 responses?

8 MS. WALSH: Objection to form.

9 A. Yes. We did track the responses.

10 Q. And if the, if the recipients responded to  
11 their local election offices, did you also track  
12 those?

13 MS. WALSH: Objection to form.

14 A. No. I believe we instructed them to  
15 respond to us, and then we would forward the  
16 information to the county election offices.

17 Q. All right.

18 Now, I'm going to go back to Exhibit 17,  
19 which I think you have in front of you, by paper?

20 A. I do, yes.

21 Q. Okay.

22 I'm going to direct you to what's  
23 Bates-stamped D217.

24 A. I have that.

25 Q. And at the top of the page, it says

1 "Universe Review".

2 Do you see that?

3 A. I do, yes.

4 Q. Have you seen that page before?

5 A. I have, yes.

6 Q. And would you agree this still refers to  
7 the 11,198 records that we were talking about when  
8 we discussed the previous exhibit that was the  
9 letter that was sent out?

10 A. Yes.

11 Q. And can you explain to me what letter "I"  
12 means. Two hundred eighty-six removed because they  
13 were already canceled?

14 A. Yes. They had -- in the intervening time,  
15 their voter records have been canceled.

16 Q. And in double ii, No. 1, it says "1,915"  
17 people "affirm their registration."

18 How did the people affirm their  
19 registration?

20 A. They affirmatively responded that they  
21 were in fact qualified, that they were citizens and  
22 met qualifications to be registered.

23 Q. Well, how did they respond? Like what was  
24 the mechanism? Was it a letter? E-mail? Phone  
25 call?

1 A. It would have been the letter.

2 Q. Okay.

3 So that's Exhibit 20.

4 MS. WALSH: We do not have a paper copy of  
5 that.

6 MS. KERNS: Oh, sorry.

7 Okay.

8 I'll put that back up then.

9 A. We have, we have it up.

10 Q. When you said that they mailed back a  
11 letter, is that what they mailed back?

12 A. I believe it was part of -- sorry. Could  
13 you scroll down, Chris.

14 Yes.

15 Q. What did the Department of State do with  
16 the letters, once they received them?

17 A. We tracked their responses and I believe  
18 retained the letters.

19 Q. Retained them how?

20 A. We didn't -- these we would not -- the  
21 affirmative responses would have not been forwarded  
22 to the county election offices.

23 Q. I'm sorry. I didn't hear that.

24 You did forward them? Or did not?

25 A. I don't believe we did not -- I don't

1 believe these responses would have been forwarded to  
2 the county election offices.

3 Q. Okay.

4 So what happened to those letters?

5 A. I believe those letters are retained by  
6 the Department.

7 Q. And what would have been sent to the  
8 counties?

9 A. Individuals who -- requesting cancelation.

10 Q. And do you know what the counties would  
11 have done with those letters?

12 A. They would have, they would have  
13 verified -- if they requested cancelation, they  
14 would have canceled the records.

15 Q. And would they have retained those  
16 letters?

17 MS. WALSH: Objection to form.

18 A. I, I -- yes, I would expect that they  
19 would, yes.

20 MS. WALSH: I'll just note for the record  
21 that the witness was handed copies of the last -- I  
22 believe it's 19 and 20.

23 THE WITNESS: Yes.

24 Q. As we stand here today, does the  
25 Department still have those 1,915 letters?

1 MS. WALSH: Objection.

2 A. I believe so, yes.

3 Bless you.

4 MS. WALSH: Bless you.

5 MS. KERNS: Thank you.

6 Q. Were they kept in paper form or were they  
7 scanned?

8 A. I don't know.

9 Q. Was anything else done to affirm that  
10 these individuals meet the requirement, other than  
11 reviewing their -- the letter that they sent back?

12 A. No.

13 Q. Okay.

14 When we -- turning back to Exhibit 17,  
15 which was the one that had Bates-stamped 217,  
16 "Universe Review".

17 A. Yes. I have it.

18 Q. And it says "215" were "canceled on the  
19 form sent."

20 What form was sent?

21 A. The requests for cancelation.

22 Q. Okay.

23 And is that the form that's in Exhibit 20,  
24 Bates-stamped 195, the letter dated June 12th, 2018?

25 A. Yes.

1 Q. And what does the Department of State do  
2 after receiving that form?

3 A. These were forwarded to the appropriate  
4 county election office.

5 Q. So who would have, who would have canceled  
6 the registration? Would it have been the Department  
7 of State or the county office?

8 A. It would have been the county office.

9 Q. Do you know if any of these forms were  
10 returned directly to the county office and not to  
11 the Department of State?

12 A. I don't recall if any of the forms were  
13 returned to the county office. Or, wait. I'm  
14 sorry.

15 No. They would have been sent to the  
16 county office.

17 Q. Upon -- so the voter request to cancel  
18 registration were not sent to the Department of  
19 State?

20 A. I believe we, we instructed -- we provided  
21 a copy of the form, along with the addresses for the  
22 voter registration offices.

23 Q. All right.

24 Going back to Exhibit 17, the one that  
25 says "Universe Review", and it's Bates-stamped 217.



1 A. Yes.

2 Q. Under double ii 3, why did "84 need  
3 further review"?

4 A. I, I don't recall. I, I believe that may  
5 have been because the response was unclear.

6 Q. And who, if anybody, conducted that  
7 further review?

8 A. It -- I believe it would have been  
9 conducted in conjunction with the appropriate  
10 county, if necessary.

11 Q. So were those voter registrants contacted?

12 A. I, I don't, I don't recall if they were  
13 contacted by the Department.

14 Q. Were they contacted by the voter  
15 registration offices?

16 MS. WALSH: Objection to form.

17 A. I believe ultimately, yes.

18 Q. And on that same page where it says  
19 "Universe Review", No. 2 says "that leaves 8,698  
20 records, broken down as follows."

21 Under No. 2, there are two categories: "No  
22 Response" and "Undeliverable".

23 A. Right.

24 Q. So does that mean that 8,698 people did  
25 not receive this letter, either because there was no

1 response or because the address was undeliverable?

2 MS. WALSH: Objection to form.

3 A. Well, I think it would be fair to say that  
4 the 8,985, plus 1,073 undeliverable would have not  
5 received it. The remainder in, in "i" above did not  
6 respond.

7 Q. And what did the Department of State do  
8 with those 8,698 records?

9 A. We provided that information to the, to  
10 the appropriate county election offices.

11 Q. And then what happened after that?

12 A. The counties were -- the counties did  
13 additional investigation or follow up as, as  
14 necessary.

15 Q. How do you know that?

16 A. Well, we, we understood from some counties  
17 that they had -- you know, our advice to them was to  
18 consult with our solicitor to determine next steps,  
19 and we know that counties did that.

20 Q. Did the Department of State do a follow up  
21 on whether or not any of these 8,698 records are  
22 still registered voters?

23 A. I don't recall that we've done an  
24 additional analysis.

25 Q. Is it possible any of those 8,689 records

1 are still on the voter rolls?

2 MS. WALSH: Objection to form.

3 A. It's possible, yes.

4 Q. And further down on that page, under No. 4  
5 where it says "Files were sent to the appropriate  
6 counties on July 26th and loaded into their security  
7 FTP sites."

8 What files were sent?

9 A. The files would have been the list of  
10 voters that would require additional outreach or  
11 investigation by the counties.

12 Q. In this universe of 11,198?

13 A. It would be the, the 8,700 that did not  
14 already respond or there was not already a  
15 resolution.

16 Q. After that part of the process, where  
17 files were sent to the appropriate counties, did the  
18 Department of State do anything else to identify any  
19 other registrants that might lack citizenship?

20 MS. WALSH: Objection to form.

21 A. No. I'm not aware of any others.

22 Q. And have you spoken directly with Al  
23 Schmidt about his testimony regarding the hundred  
24 thousand matches?

25 A. I have not, no.

1 Q. Has anyone from the Department spoken to  
2 him about that testimony?

3 A. I, I don't believe so, no.

4 Q. And why was the universe of people who got  
5 letters, the 11,198, and not the 100,000 that  
6 initially matched?

7 MS. WALSH: Just note an objection, again,  
8 to the extent you're asking questions that delves  
9 into an area that's protected from discovery by the  
10 attorney-client privilege and the work-product  
11 doctrine.

12 A. Well, the 100,000 --

13 MS. WALSH: If you can answer the question  
14 without getting into either privileged  
15 communications or privileged investigation, but I  
16 would caution you not to do so, not to disclose that  
17 information.

18 Q. So can you tell me why the full 100,000  
19 registrants did not get letters?

20 MS. WALSH: Same objection.

21 A. I -- you know, as, as we told Commissioner  
22 Schmidt, that was simply the universe of potential.  
23 There was no, there was no evidence or no reliable  
24 information to suggest that that many individuals on  
25 the voter records were not citizens.

1           Q.    And who determined whether or not that  
2 information was reliable?

3           A.    The Department, and I think common sense  
4 actually dictated that it wasn't.

5           Q.    How would common sense dictate?

6           A.    Well, you know, you're doing, you're doing  
7 a match of point-in-time data against another  
8 database. So without additional information, there  
9 would be no way to determine whether any of those  
10 individuals were not citizens, for example, at the  
11 time they registered.

12                   As I said, there are a variety of INS  
13 indicators, and not all of them mean that the voter  
14 isn't a citizen. So it was a very-high level -- and  
15 that's why I would never characterize it as an  
16 analysis.

17                   And maybe I can give you an example, if it  
18 helps.

19                   The State of Florida attempted a similar  
20 thing, and started with the universe of, I think,  
21 180,000, and after doing a more responsible analysis  
22 ended up with several thousand in that -- as they  
23 did additional investigation with their county  
24 election offices, that was whittled down to just a  
25 few hundred.

1 Q. Well, I'm talking about Pennsylvania, not  
2 Florida.

3 So with regard to the INS indicators on  
4 the driver's license, what else would the INS  
5 indicator indicate other than citizenship status?

6 MS. WALSH: Objection to form.

7 A. I'm not an expert on, on everything within  
8 PennDOT's database, but my understanding is not all  
9 of those INS indicators indicate that somebody is  
10 not a citizen.

11 And even the ones that do indicate that  
12 somebody may not have been a citizen at a point in  
13 time doesn't indicate that they're currently not a  
14 citizen.

15 MS. KERNS: Okay. I'm going to pull up  
16 Exhibit -- what I'm going to mark as Exhibit 21.  
17 This is Bates-stamped 184 -- D184 and D185.

18 (Deposition Exhibit No. 21 marked for  
19 identification.)

20 Q. Let me know when you can see that.

21 Do you have that in front of you?

22 A. 184?

23 Q. Yeah.

24 A. Did you say 184?

25 Q. Bates-stamped D184 and D185. It's an

1 e-mail from Kathy Boockvar to the County Election  
2 Directors --

3 A. Yes, I have that.

4 Q. -- dated April 27th of 2018.

5 A. Yes.

6 Q. If you go to the second page, Secretary  
7 Boockvar states, "Currently, the Department is  
8 continuing its analysis. Following the Primary,  
9 when voter roll maintenance may legally occur, the  
10 department will use nationally-recognized list  
11 maintenance practices, including the use of updated  
12 registration information obtained through the ERIC  
13 voter maintenance program, to conduct analysis and  
14 take additional verification actions."

15 Did the Department of State end up using  
16 the ERIC information?

17 A. No.

18 Q. Why not?

19 A. Well, the ERIC information wouldn't be  
20 informative.

21 MS. WALSH: Ms. Kerns, the witness has a  
22 paper copy which he was just handed of Exhibit 21.

23 MS. KERNS: Okay.

24 Thank you.

25 Q. So in this e-mail, Secretary Boockvar

1 states specifically, "including the use of updated  
2 registration information obtained through the ERIC  
3 voter list maintenance program."

4 Why did Ms. Boockvar write that in the  
5 e-mail, if that information would not be  
6 informative?

7 MS. WALSH: Objection to form.

8 A. I think the only, the only thing that ERIC  
9 would be able to give us is, perhaps, an updated  
10 address.

11 Q. Did the Department conduct further  
12 analysis?

13 MS. WALSH: I just note an objection.

14 And I understand from your question, are  
15 you asking whether the Department internally and  
16 separate and aside from the experts analysis? Is  
17 that what you're asking?

18 MS. KERNS: Yes.

19 A. No. This, this ties directly back to  
20 the -- I forget which exhibits they were, but the  
21 letters.

22 So after the Primary, we sent letters to  
23 11,198. That was after additional expert analysis.

24 Q. This Exhibit 21 -- excuse me, yeah, 21  
25 references "further analysis" and "continuing



1 analysis".

2 So was that performed?

3 MS. WALSH: Objection; asked and  
4 answered.

5 A. Yes. I think -- and I think that's  
6 demonstrated in the, in the exhibits we provided  
7 previously.

8 This was, this was written to the counties  
9 at the time the 7,702 went out.

10 And then as you may recall in the  
11 Statement, we indicated additional analysis was  
12 conducted, and that resulted in the mailing of  
13 11,198 records after this date -- I'm sorry, 11,198  
14 letters. Not records.

15 Q. With regard to the analysis, earlier you  
16 testified that you believe that the SAVE, S-A-V-E,  
17 database is not a reliable source when it comes to  
18 verifying the citizenship of registered voters.

19 Do you remember testifying about that  
20 earlier today?

21 MS. WALSH: Note an objection to the form.

22 A. Yes.

23 Q. If a reliable database existed, do you  
24 think that kind of a database would be helpful in  
25 performing voter list maintenance?

1 MS. WALSH: Objection to form; calls for  
2 speculation. What are you -- I'm not even sure what  
3 you're asking, what specific databases or potential  
4 databases you're talking about. I don't know how  
5 the witness can answer that question.

6 Q. Can you answer the question, Mr. Marks?

7 A. I, I don't know whether it would be  
8 helpful or not. I'd have to know what it is.

9 Q. Are you --

10 A. And to be clear, the same database. It's  
11 not, it's not simply my opinion.

12 The Department of Homeland Security has  
13 stated that it's not reliable for verifying  
14 citizenship for voter registration. Even the former  
15 Secretary of State in Kansas conceded that SAVE is  
16 not a reliable source.

17 Q. Are you aware of any databases that are  
18 reliable sources with regard to that information?

19 MS. WALSH: Objection to form.

20 A. I'm not aware of a database that would  
21 confirm someone's citizenship, no.

22 (Deposition Exhibit No. 22 marked for  
23 identification.)

24 Q. All right.

25 I'm going to now go to Exhibit 22. And

1 this is the Defendant's Responses to Plaintiff's  
2 Interrogatories. And these were provided July -- in  
3 or about July 13th, 2020.

4 Let me know when you can see that.

5 A. Okay. We have it up.

6 Q. Okay.

7 If you go to Interrogatory No. 5, which is  
8 page 8 of the responses. And Interrogatory No. 5  
9 states "Describe the activities and role of the  
10 Electronic Registration Information Center (ERIC)  
11 with respect to the non-citizen matching analysis  
12 and the initial statewide analysis."

13 Do you see that?

14 A. I do, yes.

15 Q. And in her response -- which is the third  
16 full paragraph of the response, it states "Secretary  
17 Boockvar has no firsthand knowledge that the  
18 Electronic Registration Information Center was used  
19 for either purpose."

20 Was the -- is that, is that interrogatory  
21 answer accurate?

22 A. Let me scroll back up to the  
23 interrogatories. I just want to make sure I --

24 Yes, it is.

25 Q. So we listed another exhibit where Ms.

1 Boockvar sent an e-mail out stating that --

2 A. Is it 21? Exhibit 21?

3 Q. Yes.

4 A. Okay.

5 I have it.

6 Q. Yeah.

7 Referring that "including the use of  
8 updated registration information obtained through  
9 ERIC."

10 So how do you square those two statements?

11 A. Oh. I, I can't speak for Ms. Boockvar,  
12 but the -- you know, I think it's clear that ERIC --  
13 the ERIC program data could not be used to determine  
14 the citizenship status of an individual.

15 Q. So was that e-mail, that Secretary  
16 Boockvar sent out referring to ERIC, inaccurate?

17 MS. WALSH: Objection to form.

18 A. I think to the, to the extent that it was  
19 understood to mean that ERIC would be able to  
20 provide information regarding the citizenship status  
21 of vote registrants, then yes.

22 MS. KERNS: All right.

23 I'm going to pull up Exhibit 23, and Ms.  
24 Walsh, I'm almost through, just so you know.

25 MS. WALSH: Thank you.

1           The witness -- oh, wait. He has got in  
2     front of him a copy of 22, just to --

3           MS. KERNS: No. I'm sorry. I'm now  
4     pulling up Exhibit 23, which is Bates-stamped  
5     PILF 937 through PILF 938. And this I'm marking as  
6     Exhibit 23.

7                     (Deposition Exhibit No. 23 marked for  
8     identification.)

9           Q. Let me know when you can see it.

10          A. This is February 29 in 2008?

11          Q. Right.

12          A. United States District Court.

13          Q. Right.

14          A. It looks like there's a Post-It note  
15     posted over top of it.

16          Q. Right. There's handwriting on it.

17                     And this is a letter from the Jury  
18     Administration Supervisor for the United States  
19     District Court for the Western District of  
20     Pennsylvania.

21                     The first paragraph of this letter reads  
22     that "this letter and its enclosure is to notify  
23     you" -- and it's addressed to Mr. Harry VanSickle of  
24     the Commonwealth of Pennsylvania, Department of  
25     State -- "it's to notify you of those individuals

1 who notified the Jury Office of the U.S. District  
2 Court Western District of Pennsylvania, during the  
3 jury qualification process, that they are not U.S.  
4 citizens."

5 Have you ever seen a letter like this  
6 before?

7 A. I have, yes.

8 Q. Now, that first paragraph, the last  
9 sentence says "The attached list of names was  
10 included in the voter records this court received  
11 after the November 2006 General Election."

12 Do you see that?

13 A. I do, yes.

14 Q. And the next page of that exhibit, at the  
15 top, it says "Non-Citizen Report".

16 A. Yes.

17 Q. What do the counties -- I'm sorry. What  
18 would the Department of State do, once they received  
19 a letter like this?

20 A. We would provide the information to the  
21 counties.

22 Q. And how often does the Department of State  
23 receive letters like this?

24 A. They are, they are infrequent but  
25 periodically.

1 Q. Can you describe "periodically".

2 A. My, my recollection is that we would get  
3 them maybe, you know, once every couple of years, at  
4 most.

5 Q. Now, this one is from the United States  
6 District Court, which is the federal court.

7 Does the Department of State ever receive  
8 them from Pennsylvania state courts? Any Courts of  
9 Common Pleas?

10 A. I don't, I don't recall that we've  
11 received letters like this from state -- the State  
12 Court System.

13 Q. Do you know if the County Commissioners  
14 receive letters from the state court, from the State  
15 Court System?

16 A. I don't know if the counties receive  
17 letters directly from the State Court System.

18 Q. When the Department of State receives a  
19 letter like this, does the Department of State  
20 maintain a copy?

21 A. We would, we would forward it on to the  
22 county election office; so we, we would have a  
23 record of those communications.

24 Q. Are those records maintained in the SURE  
25 system?

1 A. The voter records or --

2 Q. I'm sorry.

3 The records of these types of letters?

4 A. They are not.

5 (Deposition Exhibit No. 24 for  
6 identification.)

7 Q. Now, I'm going to show you Exhibit No. 24.  
8 I'm going to pull that up.

9 Let me know when you can see it.

10 Can you see it on your screen?

11 A. Almost there. I -- this has "City Life"  
12 at the top.

13 Q. Right. So I'm going to --

14 A. I see that.

15 Q. So this is a Philadelphia magazine article  
16 dated January 9, 2021. And I'm going to go to the  
17 paginated 1 of 8, 2 of 8. I'm going to go to 3 of  
18 8.

19 A. Can you scroll.

20 Q. Mr. Marks, can you see that?

21 A. Which part of it?

22 Q. Well, can you see at the top of the page,  
23 it says -- near the top, there's a line that says,  
24 "I have no idea. I'm so sorry."

25 Can you see that?



1           A.    I'm looking for it.

2                   Oh, yes.   Okay.

3           Q.    Okay.

4                   So right under that, there's a paragraph  
5 that starts "Trump's sentiments about Philly  
6 elections weren't exactly new."

7                   Do you see that paragraph?

8           A.    I'm sorry.   I'm having a hard time.   I  
9 think the glare is starting to -- from the lights,  
10 the darker it gets.

11                  MS. WALSH:   We're printing a copy.

12                  THE WITNESS:   Okay.

13                  MS. WALSH:   It should be a few seconds.

14           A.    Okay.   I apologize, Ms. Kerns.

15           Q.    Let me know when you have it.

16           A.    I'd walk up to the screen, but I assume  
17 you don't want to see a close-up of my tie.

18           Q.    I'm fine.

19                   While it's printing, I'll say that the  
20 question was -- or the paragraph starts "Trump's  
21 sentiments about Philly elections weren't exactly  
22 new.   I've lived here all my life, and I've heard of  
23 the "old dead people" voting thing for as long as I  
24 can remember.   Has anyone ever actually voted in the  
25 name of a dead person?"

1                   And then as part of the answer,  
2       Mr. Schmidt says "And we have investigated these  
3       claims dozens of times, and every single time,  
4       there's no evidence of fraud."

5                   Do you know what he means "we have  
6       investigated"? Is that -- do you know if he means  
7       the Department of -- and I realize that you might  
8       not have seen this before.

9                   Do you know if he's referring to  
10      investigations by the Department of State or  
11      investigations by the department -- the Philadelphia  
12      City Commissioners?

13                  MS. WALSH: Objection to form.

14                  A. I, I don't know. I haven't seen the  
15      article before, and I, I can't say for certainty,  
16      but -- for certain, but I would, I would expect that  
17      he's referring to the Board of Elections.

18                  Q. All right.

19                  And then further down, near the end of the  
20      article, there's a question that says "Right before  
21      the election, I saw a media report that 90 percent  
22      of eligible voters were registered to vote in  
23      Philadelphia, which seems suspiciously high, even  
24      though I know there was a lot of interest in this  
25      election."

1           And Mr. Schmidt's answer is "Well, the  
2       Pennsylvania registration system prohibits anyone  
3       from being removed from the rolls unless they've  
4       been inactive for seven years, which is missing 14  
5       elections in a row."

6           Would you consider that statement  
7       accurate?

8           MS. WALSH: Objection to form.

9           A.    No, I would disagree with it. I don't  
10       know that it's a -- if he's referring to someone who  
11       is simply registered and then did not do anything  
12       for a period of seven years; I think he's maybe  
13       doing the math on the five-year notice, plus the two  
14       federal elections.

15           But when he says "inactive", I, I take  
16       that to mean that the record -- the voter record is  
17       inactive. That would occur, in most cases, over the  
18       course of just two federal elections.

19           Q.    Okay.

20           A.    I don't know exactly what he was trying to  
21       communicate here. You know, it's his statement, but  
22       maybe he was trying to make a point regarding the,  
23       the -- you know, requirements of the NVRA as well as  
24       Pennsylvania's Voter Registration Law.

25                       (Deposition Exhibit No. 25 marked for

1 identification.)

2 Q. Okay.

3 I just have a couple more exhibits.

4 This one is Bates-stamped D241, and it is  
5 dated April 19, 2010.

6 Let me know when you can see it.

7 We're going to put it up on the screen.

8 It's Bates-stamped D241.

9 A. At the top, County of Allegheny Department  
10 of Administrative Services Elections Division?

11 Q. Right.

12 A. I see it.

13 Q. That letter -- the author of that letter  
14 is Mark Walosik, Division Manager.

15 Do you know Mr. Walosik?

16 A. Yes. I did know Mark Walosik.

17 Q. At the bottom of the letter, in  
18 handwriting, it says "Original list and letter in,  
19 single quote, 'citizenship issues; single quote,  
20 'file'."

21 Do you see that?

22 A. I do, yes.

23 Q. Do you know what he's referring to?

24 A. I don't, no.

25 Q. Does each county keep a citizenship issue

1 file?

2 A. I don't know that.

3 Q. Does the Department of State keep that  
4 type of a file?

5 A. No.

6 Q. Is there a file in the SURE system called  
7 "citizenship issues" that you're aware of?

8 A. No.

9 Q. All right. I'm going to move to the next  
10 exhibit, Exhibit 26, and this is Bates-stamped D2091  
11 through D2093.

12 (Deposition Exhibit No. 26 marked for  
13 identification.)

14 Q. Let me know when you can see that.

15 A. I can see it. This is a -- it appears to  
16 be an e-mail from Kathryn Boockvar.

17 Q. Yes.

18 A. Dated April 30th, 2018.

19 Q. Right.

20 And if you scroll down, it's in response  
21 from an e-mail from Nick Custodio of Philadelphia.

22 Have you ever seen --

23 A. Yes.

24 Q. I'm sorry.

25 Have you ever seen this e-mail before?

1           A.    I don't recall seeing this e-mail, no.

2           Q.    Okay.

3                   Well, if you look at what Mr. Custodio  
4 wrote, he said, "Kathy, Lisa would like to know:  
5 How many of these are going out in Philadelphia?  
6 How many of these people in Philadelphia have voted?  
7 Is there a search in SURE that we can do to get a  
8 list of who this is going to? Or could you provide  
9 us with a list? What happens to those who don't  
10 respond to the letter? Is there with some way to  
11 log that a voter confirms that they meet all of the  
12 requirements so that they are excluded from any  
13 future communications/risk to their voting status  
14 and related to this matter."

15                   And Mrs. Boockvar responded, "Hi, Nick.  
16 Federal and state laws protect the privacy of these  
17 individuals. So we cannot release the list."

18                   Do you know what she's referring to when  
19 she talks about federal and state law protecting the  
20 privacy?

21                   MS. WALSH: Object to the form.

22           A.    I'm not, I'm not an attorney. I do know  
23 that the list was derived in part with protected  
24 driver's license or motor vehicle records, but I  
25 don't, I don't know specifically what laws she's

1 referring to.

2 Q. And Ms. Boockvar said in that e-mail,  
3 "Approximately 2,101 people recently or currently  
4 registered in Philadelphia were mailed the letter."

5 Do you know how that was determined who  
6 those 2,100 people were?

7 MS. WALSH: Just note an objection, again,  
8 to the extent you're asking the witness about the  
9 privileged investigation, which is protected from  
10 disclosure.

11 A. I would -- I believe she was referring  
12 to -- because if you go to the beginning of this  
13 thread, it is her e-mail to the counties regarding  
14 the expert analysis that the Department had  
15 undertaken. So I believe she's answering that in  
16 the context of that. So that number would have been  
17 derived from that expert analysis.

18 Q. And here again, Ms. Boockvar, in that same  
19 answer, the second sentence from the last says,  
20 "After the primary, when list maintenance can  
21 legally occur, the department will take further  
22 steps and conduct further analysis, including use of  
23 the ERIC voter list maintenance program."

24 Did that further analysis occur?

25 MS. WALSH: Same objection, to the extent

1 you're asking about a privileged analysis and  
2 investigation.

3 A. As, as we noted earlier, between the, the  
4 April letter and the subsequent June letter,  
5 additional analysis occurred resulting in the list  
6 of 11,198.

7 In regard to the reference to the ERIC  
8 voter list maintenance program that did not occur.  
9 ERIC does not provide informative information  
10 regarding the citizenship status.

11 Q. Would there be a reason why Ms. Boockvar  
12 keeps referring to ERIC?

13 A. I, I can't answer that. I don't know.

14 Q. You had testified that after sending the  
15 second letter to the 11,198 individuals that you  
16 sent the counties files, and those files included  
17 individuals that had not responded to the letters or  
18 who had undelivered mail.

19 Do you remember that testimony?

20 A. I do, yes.

21 Q. Did those files include the identities of  
22 those individuals?

23 A. I believe those files included the names  
24 of those individuals, yes.

25 Q. Did it include any other identifying



1 information, like address or voter number?

2 A. I, I believe it would have included that  
3 information about each, each registrant, yes.

4 Q. Then why didn't federal law and state law  
5 protect the identity of those individuals at that  
6 point in time?

7 MS. WALSH: Objection; it calls for a  
8 legal conclusion.

9 A. Yeah. Again, I'm not, I'm not an  
10 attorney.

11 Q. But you would agree that there was some  
12 type of a determination made that that was not  
13 privileged or protected; correct?

14 MS. WALSH: No. Mischaracterizes the  
15 testimony. I object. I object to the form of the  
16 question and I object to the extent you're seeking a  
17 legal conclusion.

18 Q. Who makes the determination, Mr. Marks, of  
19 when something is protected by federal or state law?  
20 Is it someone from the Department of State?

21 MS. WALSH: Objection; it calls for a  
22 legal conclusion. You're far outside the narrow  
23 scope of what this deposition was supposed to be  
24 about, and I object to the form of the question.

25 A. I'll go back to my testimony earlier this

1 morning. We, we consult with our counsel over what  
2 information is, is appropriate to provide under  
3 whether it's federal or state law. So that would be  
4 a decision done in consultation with our counsel.

5 (Deposition Exhibit No. 27 marked for  
6 identification.)

7 Q. Okay.

8 I'm going to pull up my last exhibit,  
9 Exhibit 27, and this is Bates stamped D2170 through  
10 D2175.

11 Let me know when you can see that.

12 A. It's an e-mail from me dated  
13 August 10th or 16th, 2018.

14 Q. Okay.

15 If you go down to the second page of this  
16 exhibit. It's Bates-stamped D2171.

17 Do you see that?

18 A. I do, yes.

19 Q. So there's an e-mail from  
20 paelectiondirectors@yahoogroups.com, and it's to  
21 paelectiondirectors@yahoogroups.com.

22 MS. WALSH: Are you referring to an e-mail  
23 on Monday, July 30th at 10:43 a.m.?

24 MS. KERNS: Yes.

25 Q. Yes. The second page of this exhibit.

1           A.     Yes.  I see that.

2           Q.     What is that?  Who's a member of that  
3     Yahoo group?

4           A.     Those are county election officials.

5           Q.     When did that Yahoo group start?

6           A.     I don't know.

7           Q.     Are you a member of that Yahoo group?

8           A.     No.

9           Q.     Have you ever received an e-mail from that  
10    Yahoo group?

11          A.     We do, if, if, if I'm copied on an e-mail  
12    that goes to the group, yes, but we can't respond to  
13    the group.

14          Q.     Why not?

15          A.     Because we're not members.

16          Q.     How long have you been aware that this  
17    group existed?

18          A.     I believe it has existed for several  
19    years, perhaps, a decade.

20          Q.     Are they e-mails or communications in  
21    this -- in and among this group archived anywhere?

22          A.     I don't know.

23          Q.     Was this type of group -- was this group  
24    authorized by the Department of State as a way to  
25    communicate?

1           A.     No.

2                   MS. WALSH:  Objection to form.

3                   MS. KERNS:  I'm sorry.  I didn't hear  
4     that, Ms. Walsh.

5                   MS. WALSH:  I said "objection to form".

6           Q.     Okay.

7                   In this, in this e-mail that you sent to  
8     Shari Brewer on August 10th, 2018 --

9           A.     Yes.

10          Q.     -- you say "Other counties have reviewed  
11     the individuals' voter registration records to  
12     determine whether the records included additional  
13     information that might be useful for further  
14     determination.  If you do not identify information  
15     that warrants a challenge to an individual's  
16     eligibility, we are not suggesting that you have an  
17     obligation to assert a challenge."

18                   How would the counties identify  
19     information that warrants a challenge?

20                   MS. WALSH:  Objection to form.

21          A.     Well, the counties, the counties would  
22     work with their solicitor and, and potentially the  
23     district attorney to investigate, as they would any  
24     other election issue or potential election  
25     irregularity, and determine whether they could

1     ascertain information that would require them to  
2     take additional action.

3           Q.     So if you can explain to me what they  
4     would use to identify the information that warrants  
5     a challenge?

6           MS. WALSH:  Objection; asked and answered.

7           A.     Well, I think that would be, I think that  
8     would be up to each county to determine what  
9     information they may have available to them to make  
10    that determination that done consultation with  
11    their, with their county solicitor and their  
12    election board.

13           MS. KERNS:  And I'm sorry.  I know I said  
14    that was the last exhibit, but I have one more  
15    exhibit, which is essentially all of the documents,  
16    because I haven't had a chance to go through them.  
17    I'm just going to have to mark them as an exhibit,  
18    the batch of documents that I received last night by  
19    e-mail that I couldn't open and look at until this  
20    morning at 9:30.

21           So I don't know if you have them in front  
22    of the witness, Ms. Walsh?

23           MS. WALSH:  We do not.

24           MS. KERNS:  I'm sorry?

25           MS. WALSH:  We do not.

1 MS. KERNS: Well, we'll try to put it up  
2 on the screen to share it.

3 And we're going to mark this as Exhibit --  
4 this would be Exhibit 28. And the best way to  
5 identify it is the exhibits sent by counsel for the  
6 Department on -- by e-mail on December --  
7 February 11th, 2021.

8 (Deposition Exhibit No. 28 marked for  
9 identification.)

10 Q. So can you see that first page, Mr. Marks?

11 A. I can. It's, it's hard to see the  
12 details.

13 Q. Can you tell me what this is?

14 A. It appears to be a list.

15 Q. Can you tell what it was generated from?

16 A. Well, I can, I can tell what format it's  
17 in. It appears to be a spreadsheet, and it appears  
18 to be a list of voter records.

19 Q. Can you tell if this was generated by SURE  
20 or from SURE?

21 A. I would expect that the, that the data in,  
22 in the list would have been at least in part  
23 generated using SURE data.

24 Q. Have you ever seen this before?

25 A. I did see a copy of this this morning.

1 Q. Had you seen it prior to this morning?

2 A. I don't recall seeing it prior to this  
3 morning, no.

4 Q. Do you remember earlier, when we discussed  
5 a query that you said you had performed that  
6 generated 1,160 records?

7 A. Yes.

8 Q. Is this that -- is this the results of  
9 that query?

10 A. I believe it is, yes.

11 Q. When you generate a query, I think you  
12 called it a back-end-query. Is this what the result  
13 looks like?

14 MS. WALSH: Objection to form.

15 A. It -- this is what -- yeah. This is what  
16 the results of the data -- it would depend on the  
17 query, you know, obviously. The columns may be  
18 different, and depending on what you're querying,  
19 but, yes, it will pull data, and you typically would  
20 pull that into a, you know, access -- or Excel  
21 database depending on the size.

22 Q. So moving down to the next part, can you  
23 tell me what these next records are? If you can  
24 see, we put it up on the screen. It says "Row  
25 Labels", "Count of VoterIDNum", N-U-M, "Row Labels".

1           A.     That appears to be a -- now, you're  
2     testing my technical knowledge, but it looks like a  
3     -- I can't think of the word, all of a sudden.  
4     It's, it's like a summary of the data. It's a pivot  
5     table.

6           MS. WALSH: Ms. Kerns, we're having  
7     difficulty seeing the entirety of the screen. And  
8     I'm not sure if that's on our end or your end, but  
9     we're not able to see the -- it's at the top.

10          Q.     Well, for instance, like it would -- it  
11     will -- it has what looks like maybe a year, "Row  
12     Labels 1977-05-17" and then underneath it, it says  
13     "Bucks". And it says "Count of Voter ID Num".

14                 Do you know?

15          A.     I mean, this is, this is a pivot table  
16     inside of the spreadsheet that sort of summarizes  
17     the raw data within the spreadsheet.

18          Q.     So what would --

19                 MS. WALSH: I apologize for interrupting.

20                 So the witness was just handed a paper  
21     printout of the documents --

22                 MS. KERNS: Oh.

23                 MS. WALSH: -- that you referenced. I  
24     think it will make things -- we'll able to see the  
25     records, since we're trying to look here at the big



1 screen.

2 MS. KERNS: Yeah. That helps.

3 MS. WALSH: And I'll also just note that  
4 the redactions of personal identifying information,  
5 was done by our office. We had given you that in a  
6 cover letter sent to you yesterday.

7 Is there a particular page of the Bates  
8 number you would like the witness to turn to in the  
9 paper copy we put in front of him?

10 Q. Well, let's -- for some reason mine got  
11 corrupted too.

12 Well, Mr. Marks, if we go back to that  
13 part with the -- you called it a pivot. Did you run  
14 that report?

15 A. I did not, no.

16 Q. Do you know who ran that report? Or do  
17 you want to call it a report or a query?

18 A. I would say it's the results of a query,  
19 but I believe our Bureau of Election, Security and  
20 Technology would have run this.

21 Q. Do you know when it was run?

22 A. I don't know exactly when it was run. I  
23 believe it would have been September of 2017.

24 Q. All right.

25 Let's go to the part that Bates-stamped

1 2228 and 2229. I'm sorry. It's weird. I can't --  
2 I'm having trouble pulling up -- can you go to where  
3 it says 2228 and 2229.

4 MS. WALSH: Bear with us. We're getting  
5 there.

6 A. I have 2228. Yes.

7 Q. All right.

8 And there's a -- I think I'm referring to  
9 the right page. It says "Grand Total 642".

10 A. Yes.

11 Q. What is that a grand total of?

12 A. It would be -- appears to be a grand total  
13 of the records summarized in this pivot table, which  
14 begins -- it's hard to -- it's a printout of a  
15 spreadsheet. So it begins on 2221.

16 Q. So what does that 642 represent?  
17 Six-forty-two what?

18 A. I don't know. It's a, it's a pivot table.  
19 So it is a summary of raw data. And not knowing  
20 what the -- it looks like it's a -- just based on  
21 the headers on the pivot table, it looks like it is  
22 a count of voter ID numbers.

23 Q. Do you know what this -- my office  
24 received this last night.

25 Do you know what this was responsive to?

1 Or what, what discovery question this was answering?

2 MS. WALSH: I can answer that. Again, I  
3 know you're not looking for an answer from me, but I  
4 think I can cut through a lot of this.

5 MS. KERNS: Yes.

6 MS. WALSH: So this summarizes the, the  
7 dates of the -- as I understand it, the dates of the  
8 registrations by year of the registrations that were  
9 later canceled, as reported in the first table.  
10 Again, that's my reading of it.

11 But you can see, there are row labels,  
12 1977 Bucks, 1, Butler 1. That's at least the page  
13 that we have on our screen. I apologize. It's a  
14 little bit difficult, and I don't know that we're  
15 looking exactly what you're looking at.

16 A. This is 2221.

17 Yeah. That's what I'm looking at too.

18 Q. So, Mr. Marks, the query that resulted in  
19 this table, could the Department of State run a  
20 similar query today using SURE?

21 A. I expect that we could, yes.

22 Q. And if you go down to what's Bates-stamped  
23 2234, it indicates 11 -- a total of 1,159. So what  
24 is that a total of?

25 A. It appears to be -- if you follow it back

1 several pages, it appears to be a total of a list of  
2 records with a "status reason cancel - not a  
3 citizen".

4 Q. Do you know who produced this? I don't  
5 know what to call it. Should I call it a  
6 spreadsheet or a report or a --

7 A. It does -- it appears to be a spreadsheet.  
8 So I think it's fair to call it a spreadsheet.

9 Q. Do you know who produced this?

10 MS. WALSH: Well, we produced it to you.

11 MS. KERNS: Meaning -- no. I'm sorry.

12 Q. I mean, do you know who -- I don't mean  
13 produced it to me. I mean do you know who created  
14 this?

15 A. I believe it would have been generated by  
16 our Bureau of Elections, Security and Technology.

17 Q. And do you know when this was done?

18 A. I, I would assume it was done around the  
19 same time frame, September 2017, but that's, that's  
20 an assumption. There's a lot of pages here, so.

21 Q. So if you think it was done around 2017,  
22 do you know why it was not sent to my office until  
23 last night?

24 A. I do not.

25 Q. Okay.

1                   And in that same pile, I'm going to direct  
2                   you to 2245. Let me know when you get to it.

3                   A. I see it. I have that.

4                   Q. Okay.

5                   So that's an e-mail from Seth Bluestein to  
6                   Jonathan Marks on September 7, 2017.

7                   A. I see that, yes.

8                   Q. So was that produced as a result of the  
9                   meetings that we talked about earlier between your  
10                  office and Al Schmidt's office?

11                  MS. WALSH: Objection to form.

12                  A. It was produced in, in conjunction with  
13                  the meetings with Commissioner Schmidt's office.

14                  Q. So do you know -- and I don't mean to use  
15                  the word "produced" because I know "produced"  
16                  usually means what you would give to an attorney,  
17                  but do you know how that Excel spreadsheet, which  
18                  appears to be attached in written form starting at  
19                  2246, do you know how that was created?

20                  A. I don't know.

21                  Q. Is that information from the SURE system?

22                  A. It could be. That information is  
23                  contained in the SURE system. Whether the SURE  
24                  system was used to produce the list or not, I don't  
25                  know.

1 Q. So Mr. Bluestein talks about in his cover  
2 e-mail, "Please find attached the draft excel file  
3 that we're working on. We are actively checking and  
4 supplementing it with more information. So the file  
5 is a work-in-progress."

6 Was the Philadelphia City Commissioners  
7 doing an analysis, separate and apart from the  
8 analysis being conducted by the Department of State?

9 A. Yes. The, the Commissioners office was  
10 doing its own analysis of this issue.

11 Q. Was the Commissioners' office math using  
12 Pennsylvania Department of Transportation records to  
13 do their analysis?

14 A. I don't know. I don't believe so.

15 Q. So do you know how the Philadelphia  
16 Commissioners' Office would determine how to put or  
17 why people would appear on this list?

18 A. I don't know the details of how they, they  
19 determine that.

20 Q. Did you ask them?

21 A. Well, I, I don't know the details of how  
22 they determine in each individual record, but that  
23 was part of our discussions.

24 As you may recall, I testified earlier  
25 this morning that they had shown us examples or, or

1 samples at our first meeting of letters or  
2 correspondence or records that they had obtained,  
3 either directly from voters or from voters, or from  
4 individuals representing them. So I would think  
5 that they used their records. To what extent they  
6 used SURE to do this, I don't know.

7 Q. When you received this file from Mr.  
8 Bluestein, did you take any other action on this  
9 list?

10 A. No. This list, as Deputy Commissioner  
11 Bluestein noted in this e-mail, was a  
12 work-in-progress. This was basically a snapshot of  
13 Philadelphia County's analysis of its own records.

14 Q. Okay.

15 If you go down to Bates-stamped 2253, I'm  
16 going to ask you if you can tell me what that  
17 appears -- what that is?

18 A. 2253?

19 Q. Yes.

20 A. This -- it appears to be additional  
21 columns, perhaps in the spreadsheet that captured  
22 the party, date registered, registration source,  
23 date last changed, the driver's license. There's a  
24 "yes", which would indicate to me that that there  
25 may be a driver's license on the record; the same

1 with social security number, and then date last  
2 voted.

3 Q. And this -- you would agree this is part  
4 of the same spreadsheet attached to Mr. Bluestein's  
5 e-mail; correct?

6 A. It appears to be part of the same  
7 spreadsheet, yes.

8 Q. And he captioned this e-mail and  
9 attachment "Non-Citizen Data sheet 9/7/17".

10 MS. WALSH: Can you give the Bates number?

11 Q. That would have been on --

12 A. 2245?

13 Q. Yes.

14 A. Yes.

15 Q. So is this a list of registrants that  
16 Philadelphia determined to be non-citizens?

17 A. I can only speak to -- I mean, I think his  
18 e-mail speaks for itself, that this was part of  
19 their investigation of potential non-citizens. I  
20 can't speak to the methodology that was used to, to  
21 verify that information.

22 Q. Did the Department of State take any  
23 action to verify this information?

24 A. No.

25 Q. Were these individuals removed from the



1 voter rolls?

2 A. My understanding is that upon completion  
3 of their analysis, Philadelphia took appropriate  
4 action, which would mean canceling records that  
5 required cancelation.

6 Q. What, if anything, was done with the voter  
7 records where it indicated that non-citizens had  
8 voted?

9 MS. WALSH: Objection to form.

10 A. I don't know what Philadelphia did with  
11 records that indicated that there was a vote on the  
12 record.

13 Q. Okay. I'm going to point you to  
14 Bates-stamped 2296.

15 MS. WALSH: Did you tell us a couple of  
16 minutes ago that you were at your last exhibit and  
17 we're nearing the seven hours.

18 Are you close to completing this  
19 deposition?

20 MS. KERNS: Yes.

21 Q. Are you at 2296, Mr. Marks?

22 A. I am, yes.

23 Q. Okay.

24 If you look at 2295, this -- there's an  
25 e-mail from Wanda Murren. Who is Wanda Murren?

1           A.    She's our Director of Press --  
2   Communications and Press.  Excuse me.

3           Q.    All right.

4                   Is she still your Director of  
5   Communications and Press?

6           A.    She is, yes.

7           Q.    Okay.

8                   Attached to this e-mail, and starting at  
9   2296, there appears to be some type of a narrative.  
10   At the top it says "Pennsylvania Department of  
11   State".  And then it -- their narrative starts with  
12   "the maintenance and accuracy".

13          A.    Yes.

14          Q.    Have you ever seen this document before,  
15   2296 through 2299?

16          A.    It does look familiar.  I believe I may  
17   have reviewed it prior to this deposition.

18          Q.    Was that sent to Chris Brennan with the  
19   e-mail Bates-stamped 2295?

20          A.    It appears so, yes.

21          Q.    Was this document made public, other than  
22   being sent to Mr. Brennan, Bates-stamped 2296 to  
23   2299?

24                   MS. WALSH:  Objection to form.

25          A.    I don't know that this specific -- this

1 appears to be an e-mail. I don't know that this  
2 specific e-mail was made public.

3 Q. Did -- other than this e-mail, did Wanda  
4 Murren have any discussions with Chris Brennan about  
5 the contents of this e-mail?

6 A. I don't know. I don't know.

7 Q. If you look at 2299, at the top of the  
8 page, September 28, 2017, it says the Department of  
9 State authorized the PennDOT purchase order to  
10 reconfigure the Voter Motor process.

11 Do you have a copy of that purchase order?

12 MS. WALSH: Objection. You're far outside  
13 the scope of the topics that have brought us here  
14 today. We're at the tail end of the seven hours.  
15 This has nothing to do with the topics that bring us  
16 here today.

17 Q. Do you have a copy of that purchase order,  
18 Mr. Marks?

19 A. I don't know that I have a copy of the  
20 purchase order, no.

21 Q. Okay.

22 So let's just wrap-up by having you refer  
23 back to Exhibit No. 2, which was the letter dated  
24 October 23rd, 2017.

25 I think you had printed that out earlier.

1 MS. WALSH: You told us you're at the tail  
2 end of your exhibits. You're at the end of your  
3 seven hours. Are you almost finished?

4 MS. KERNS: Well, see. I had planned this  
5 deposition, Ms. Walsh, based on the information I  
6 had in my possession, and then I got dumped hundreds  
7 of exhibits last night. So I might have -- you  
8 know, it might have upset my planning.

9 Q. Mr. Marks, do you have Exhibit No. 2 in  
10 front of you?

11 A. I do, yes.

12 Q. Okay.

13 I'm just going to direct your attention to  
14 paragraph No. 1. We looked at this earlier today.  
15 And it says "Documents regarding all registrants who  
16 were identified as potentially not satisfying the  
17 citizenship requirements."

18 I'm not going to belabor and read the  
19 whole thing.

20 Do you remember reviewing this paragraph  
21 this morning?

22 A. Yes.

23 Q. Okay.

24 So what I'm going to ask you, now, is at  
25 the time you received this letter, did records exist

1 that were described by this request by this  
2 paragraph?

3 MS. WALSH: Objection to form to the  
4 extent that you're asking a legal conclusion.

5 Q. I don't think it's a legal conclusion.  
6 I'm asking him after -- because we've gone through a  
7 lot of documents today.

8 So now I'm asking him.

9 At the time you received this letter, the  
10 Department of State received this letter, did  
11 documents exist regarding all registrants who were  
12 identified as potentially not satisfying the  
13 citizenship requirements for registration?

14 MS. WALSH: Same objection; objection to  
15 form, and also to the extent your request calls for  
16 a legal conclusion.

17 A. I don't believe there were documents that  
18 were responsive. And I think that was explained in  
19 our response to this request.

20 Q. Okay.

21 That's not the question that I asked. The  
22 question is paragraph No. 1 is a description of  
23 types of documents.

24 Did any of those documents exist in the  
25 Department of State's possession when you received

1 this request?

2 MS. WALSH: Objection; asked and answered.

3 A. Yeah. I'll stick with my answer. I  
4 believe we've replied to this request explaining why  
5 there were no documents responsive to the request.

6 Q. All right.

7 Well, to kind of condense this. Would  
8 that be your same answer if I asked you, in  
9 paragraph No. 2, if at the time you received this  
10 letter, did the Department have any documents and  
11 records of communication received or maintained by  
12 your office from registered voters, legal counsel,  
13 claimed relatives or other agents since January 1,  
14 2006 requesting a removal or cancelation from the  
15 voter roll for any reason related to the non-U.S.  
16 citizenship and eligibility?

17 MS. WALSH: Just note an objection to the  
18 form and to the extent the request seeks a legal  
19 conclusion.

20 A. My answer would be the same, yes. Yeah.  
21 And it was explained in our response to the request.

22 Q. Okay.

23 So with regard to that exhibit in front of  
24 you, paragraphs one, two, three and four, would you  
25 consider any of the documents that we've reviewed

1 today to be described by those requests?

2 MS. WALSH: Objection to form. We've  
3 reviewed a lot of documents today. He's explained  
4 to you the history of how we got here, that there  
5 was a written response. We all know there was a  
6 detailed record that was developed in the court that  
7 preceded today. I think your question calls for a  
8 legal conclusion. Whether documents are responsive  
9 to this letter or whether they're required to be  
10 produced under the MVRA, those are legal -- those  
11 questions require legal conclusions. Okay.

12 MS. KERNS: And I think that you are  
13 coaching your witness by droning on and on with your  
14 objections.

15 Q. So I'm just going to ask him to answer  
16 whether or not anything we discussed today can be  
17 described -- that you looked at today can be  
18 described by paragraphs one, two, three and four.

19 Q. You can answer the question, Mr. Marks.

20 MS. WALSH: And, Counsel, thanks for  
21 asking me, but I take issue with your saying I'm  
22 droning on and on. You've asked some of these same  
23 questions again and again. You've used up your  
24 seven hours. We've given you considerable leeway.  
25 Now you're asking questions that are clearly, I

1 believe, inappropriate because they ask for legal  
2 conclusions, and I'm making a record, as I'm  
3 entitled to do.

4 MS. KERNS: And, Ms. Walsh, you know, I  
5 gave you leeway too, when I got dumped records, last  
6 week and then last night, for requests that were  
7 sent out last summer.

8 Q. So, again, Mr. Marks, this is the last  
9 question of the day. And just to be clear, we can  
10 either have the reporter read it back or I can  
11 repeat it. Which would you like?

12 A. You can go ahead and repeat it.

13 Q. Of the many documents that we've reviewed  
14 today, would you consider any of them as being  
15 described by paragraphs 1, 2, 3, and 4 of this  
16 letter October 23, 2017?

17 MS. WALSH: Objection; calls for a legal  
18 conclusion.

19 A. I, I didn't write this letter. So I  
20 don't, I don't know what exactly was intended, but  
21 as noted in our response, the Department did not  
22 have records that we believe that are responsive to  
23 the request.

24 MS. KERNS: Okay.

25 That concludes it. Thank you.



1                   Mr. Marks, Ms. Walsh, have a nice evening  
2                   and whoever else is in the room.

3                   MS. WALSH: Thank you.

4

5                   (Deposition concluded at 6:07  
6                   o'clock p.m.)

7                   (Signature not waived.)

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1 PUBLIC LEGAL FOUNDATION

2 vs.

3 KATHY BOOCKVAR, in her official capacity

4

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6

CERTIFICATE

7

8

I, JONATHAN MARKS, do hereby certify that I  
have read the foregoing transcript of my deposition,  
9 and it is a true and correct copy of my testimony,  
except for the changes, if any, made by me on the  
10 attached Deposition Correction Sheet.

11

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\_\_\_\_\_  
JONATHAN MARKS

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(Date)

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Notary Public

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(Date)

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1 COMMONWEALTH OF PENNSYLVANIA )  
2 COUNTY OF ALLEGHENY )  
3

4 I, Lois Sikoski, a Court Reporter  
5 and a notary public in and for the Commonwealth of  
6 Pennsylvania, do hereby certify that the witness  
7 JONATHAN MARKS, was by me first duly sworn to  
8 testify to the truth, the whole truth, and nothing  
9 but the truth; that the foregoing deposition was  
10 taken at the time and place stated herein; and that  
11 the said deposition was recorded stenographically by  
12 me and then reduced to typewriting under my  
13 direction, and constitutes a true record of the  
14 testimony given by said witness, all to the best of  
15 my skill and ability.

16 I further certify that the inspection,  
17 reading and signing of said deposition were not  
18 waived by counsel for the respective parties and by  
19 the witness.

20 I further certify that I am not a  
21 relative, or employee of either counsel, and that I  
22 am in no way interested, directly or indirectly, in  
23 this action.

24 IN WITNESS WHEREOF, I have hereunto set  
25 my hand and affixed my seal of office this 23rd day  
of February, 2021.



Lois Sikoski  
Notary Public

My Commission Expires August 2, 2024.

Exhibits				
<b>Exhibit 1</b> 4:6 13:19 14:17,18	<b>Exhibit 15-16</b> 4:25 5:2	(a) 45:13 46:16	146:12 247:6	<b>13th</b> 227:3
<b>Exhibit 2</b> 4:8 24:6,7,15 25:6 34:17 259:23 260:9	<b>Exhibit 17</b> 5:3 187:18,25 188:3 190:15,18 194:7 202:24 203:21 207:21 210:11 211:18 215:14 216:24	(a)(1) 46:15 (B)(6) 14:21 (D) 77:14 (i) 36:7 37:2 (T) 77:16 (Y) 77:15	<b>1,915</b> 212:16 214:25 <b>1-17-17</b> 108:3 <b>1-6</b> 66:24 <b>1-9</b> 24:7 <b>1/1/2006</b> 77:22	<b>14</b> 151:3,4,8 153:1 156:22,25 167:4 235:4 <b>15</b> 93:3 157:4,5 <b>1529</b> 198:22 <b>1551</b> 197:16
<b>Exhibit 3</b> 4:10 28:20,21 29:1,8 31:11 32:15 34:17 35:1	<b>Exhibit 18</b> 5:4 197:8,17,20 198:9	-	<b>10</b> 20:6 79:13,16 83:16 96:5	<b>16</b> 89:4,9 169:6, 10
<b>Exhibit 4</b> 4:11 35:18,25 36:1 39:2	<b>Exhibit 19</b> 5:5 209:15,20	-"to 168:19	<b>100</b> 184:10 205:13	<b>162</b> 198:19 <b>168</b> 67:1 107:24
<b>Exhibit 5</b> 4:12 44:21,24 45:2 46:12	<b>Exhibit 20</b> 5:6 209:2,4,16 210:17,23 213:3 215:23	0	<b>100,000</b> 170:1, 13 174:7 176:13, 22,23 187:10 220:5,12,18	<b>16th</b> 242:13
<b>Exhibit 6</b> 4:13 50:16,19 51:20 97:22	<b>Exhibit 21</b> 5:7 222:16,18 223:22 224:24 228:2	0 77:15 <b>00015</b> 87:6 <b>001360</b> 197:16 <b>0015</b> 87:14 <b>01/01/2006</b> 77:15 <b>01529</b> 198:19, 22,23	<b>10:43</b> 242:23 <b>10th</b> 242:13 244:8	<b>17</b> 51:14 187:18, 25 188:3 190:15, 18 194:7 202:24 203:2,21 207:21 210:11 211:18 215:14 216:24
<b>Exhibit 7</b> 4:15 54:2,4,14	<b>Exhibit 22</b> 5:8 226:22,25	1	<b>11</b> 84:25 85:13, 17,18,25 86:1 91:11,23 92:14 166:20,21 167:2 251:23	<b>172</b> 105:12
<b>Exhibit 8</b> 4:16 66:14,16,23 68:9 103:10,13	<b>Exhibit 23</b> 5:9 228:23 229:4,6,7	1 13:19 14:17,18 26:8,20 27:11 28:2 37:2 54:22 81:6 83:5,22 84:6 118:19 127:2 212:16 232:17 251:12 260:14 261:22 262:13 264:15	<b>11,198</b> 207:24 208:1,9,14,18 210:15,24 212:7 219:12 220:5 224:23 225:13 240:6,15	<b>173</b> 67:6 68:13 103:16,19,21 107:1 109:7
<b>Exhibit 9</b> 4:17 73:17,20,22 74:11 75:3	<b>Exhibit 24</b> 5:11 232:5,7		<b>1181</b> 125:23	<b>174</b> 67:1 69:4
<b>Exhibit 10</b> 4:18 79:13,16 83:16	<b>Exhibit 25</b> 5:12 235:25		<b>11th</b> 246:7	<b>17th</b> 51:24
<b>Exhibit 11</b> 4:19 84:25 85:13,17, 25 91:11,23 92:14 166:20,21 167:2	<b>Exhibit 26</b> 5:14 237:10,12		<b>12</b> 14:10 112:4, 10,22,24 114:4 132:22	<b>18</b> 89:17 93:23 197:8,17,20 198:9
<b>Exhibit 12</b> 4:20 112:4,10,22,24 114:4 132:22	<b>Exhibit 27</b> 5:15 242:5,9		<b>12/31/99999</b> 77:15	<b>180,000</b> 221:21
<b>Exhibit 13</b> 4:22 132:3,7,13 133:15 140:21 149:14 156:19	<b>Exhibit 28</b> 5:16 246:4,8		<b>1222</b> 54:10,15	<b>184</b> 222:17,22,24
<b>Exhibit 14</b> 4:23 151:3,4,8 153:1 156:21,22,25			<b>12th</b> 85:23 86:21 151:15 156:20 208:10 215:24	<b>19</b> 209:15,20 214:22 236:5
			<b>13</b> 132:3,7,13 133:15 140:21 149:14 156:19	<b>190</b> 209:9
				<b>195</b> 215:24
				<b>1977</b> 251:12
				<b>1977-05-17</b> 248:12
				<b>1993</b> 20:7
				<b>1:19-CV-622</b> 12:1
				<b>1:3:37</b> 170:6
				<b>1:3:57</b> 170:6

<b>1:45</b> 131:25	26:24 27:10 29:2,9 31:4 34:4, 8 35:2 86:11 113:2,11 118:5 122:5 125:2 151:15 154:7 156:20 171:9 249:23 252:19, 21 253:6 259:8, 24 264:16	<b>2295</b> 257:24 258:19	<b>30th</b> 237:18 242:23	<b>6:00</b> 11:5
<hr/> <b>2</b> <hr/>		<b>2296</b> 257:14,21 258:9,15,22	<b>31</b> 81:6 83:6,22	<b>6:07</b> 265:5
<b>2</b> 24:7,15 25:6 28:6 33:7 34:17, 25 36:13 80:24 125:22 127:3,14 217:19,21 232:17 259:23 260:9 262:9 264:15		<b>2299</b> 258:15,23 259:7	<b>31st</b> 84:7 102:4	<hr/> <b>7</b> <hr/>
<b>2,100</b> 239:6	<b>2018</b> 51:4 86:12 98:8 132:9 150:13 208:6 215:24 223:4 237:18 242:13 244:8	<b>23</b> 228:23 229:4, 6,7 264:16	<b>32</b> 79:24	<b>7</b> 54:2,4,14 253:6
<b>2,101</b> 239:3		<b>23rd</b> 24:9 26:24 27:10 34:20 259:24	<b>33</b> 100:14	<b>7,702</b> 142:11,20 144:24 147:7 206:12,23 208:2, 4,7,12,17,18 209:25 225:9
<b>20</b> 51:14,23 209:2,4,16 210:17,23 213:3 214:22 215:23	<b>2019</b> 18:20,23 19:5 197:17 198:12	<b>24</b> 232:5,7	<b>34</b> 83:14,25	<b>70</b> 128:24
<b>20--</b> 118:4	<b>2020</b> 227:3	<b>248</b> 124:21 125:6,14 126:15, 21,22 127:1,4	<b>37</b> 79:24	<b>7:00</b> 11:6
<b>2000</b> 122:4	<b>2021</b> 232:16 246:7	<b>25</b> 54:9,15 113:11 235:25	<hr/> <b>4</b> <hr/>	<hr/> <b>8</b> <hr/>
<b>2002</b> 44:20 47:7 180:18	<b>20507</b> 26:19 35:23 36:4	<b>25th</b> 113:1 125:2	<b>4</b> 28:16 34:14,15 35:18,25 36:1 39:2 113:14 219:4 264:15	<b>8</b> 36:5 66:14,16, 23 68:9 96:5 103:10,13 227:8 232:17,18
<b>2003</b> 44:2,4 122:9	<b>21</b> 86:1 93:3 222:16,18 223:22 224:24 228:2	<b>26</b> 237:10,12	<b>40</b> 98:4	<b>8,689</b> 218:25
<b>2004</b> 19:23,24	<b>21083</b> 45:5 46:15	<b>26th</b> 219:6	<b>46</b> 50:20 124:14	<b>8,698</b> 217:19,24 218:8,21
<b>2005</b> 44:5 122:9	<b>215</b> 215:18	<b>27</b> 242:5,9	<b>4th</b> 29:2,9 31:3 34:21 35:2	<b>8,700</b> 219:13
<b>2006</b> 230:11 262:14	<b>217</b> 215:15 216:25	<b>27th</b> 132:9 150:13 223:4	<hr/> <b>5</b> <hr/>	<b>8,985</b> 218:4
<b>2008</b> 19:13,23 229:10	<b>21983</b> 45:5	<b>28</b> 246:4,8 259:8	<b>5</b> 44:21,24 45:2 46:12 55:1 227:7,8	<b>80,000</b> 20:20
<b>2010</b> 80:24 236:5	<b>22</b> 226:22,25 229:2	<b>29</b> 229:10	<b>52</b> 35:23 36:3 45:4	<b>84</b> 217:2
<b>2011</b> 19:4,6,14	<b>2221</b> 250:15 251:16	<b>2:15</b> 131:19,21, 24 132:1	<b>544</b> 126:18,25	<b>897</b> 74:5
<b>2013</b> 81:6 83:5,6	<b>2228</b> 250:1,3,6	<b>2:30</b> 131:18	<b>567</b> 80:21	<b>898</b> 77:6
<b>2014</b> 83:22 86:24 87:11,13 89:7,19	<b>2229</b> 250:1,3	<hr/> <b>3</b> <hr/>	<b>59:03</b> 157:17	<hr/> <b>9</b> <hr/>
<b>2015</b> 84:6,7,10 86:11 88:25 116:2 150:7	<b>2234</b> 251:23	<b>3</b> 28:9,11,20,21 29:1,8 31:11 32:15 34:17 35:1 44:20 47:7 48:7 104:5 125:22 127:14 151:17 180:18 217:2 232:17 264:15	<b>59:39</b> 157:17	<b>9</b> 73:17,20,22 74:11 75:3 96:5 232:16
<b>2016</b> 85:23 86:21 88:15 166:22	<b>2245</b> 253:2 256:12	<b>30</b> 14:21	<hr/> <b>6</b> <hr/>	<b>9/7/17</b> 256:9
<b>2017</b> 24:10	<b>2246</b> 253:19	<b>30(b)(6)</b> 10:25 153:17 196:22	<b>6</b> 50:16,19 51:20 67:5 97:22	<b>90</b> 234:21
	<b>2253</b> 255:15,18	<b>300</b> 165:22 166:5	<b>64</b> 157:8 169:15	<b>901</b> 74:5
			<b>642</b> 250:9,16	<b>937</b> 229:5
			<b>67</b> 96:10,16 98:15 117:20 119:12 124:16, 20 128:16 149:9	<b>938</b> 229:5
				<b>9:30</b> 11:14 245:20

<p><b>A</b></p> <p><b>a.m.</b> 242:23</p> <p><b>ability</b> 49:25 50:1 58:20 96:9, 23</p> <p><b>absentee</b> 52:17</p> <p><b>abundantly</b> 178:4</p> <p><b>access</b> 47:14,16 48:18,20 49:2,3, 6,13,16,22 50:7, 8,9,11,12,14 52:21,25 55:3,11 59:2,5,8,19 65:25 66:11 67:22,24 68:1,2 104:21 150:21, 22,23 151:1 172:1 173:4 181:14 247:20</p> <p><b>accident</b> 209:20</p> <p><b>accomplish</b> 169:1</p> <p><b>accuracy</b> 36:18 39:4,11,24 40:5 41:15 95:13 98:22 154:17 258:12</p> <p><b>accurate</b> 40:10, 16,18,19,20 95:20 98:24 99:13 100:10 124:8 148:6 182:4 205:15 227:21 235:7</p> <p><b>Act</b> 35:15 36:6 37:7,10,14 38:1, 12 44:20 47:7 48:7 180:18</p> <p><b>acting</b> 21:5 151:13</p> <p><b>action</b> 41:9,12 42:17 43:7 64:2 65:20 163:16 205:21 245:2 255:8 256:23</p>	<p>257:4</p> <p><b>actions</b> 206:10 223:14</p> <p><b>active</b> 72:25 87:20,23 88:7,23</p> <p><b>actively</b> 254:3</p> <p><b>activities</b> 36:9, 17 39:3,10,16 40:4,7 42:20 55:19 57:10 98:7 102:18,25 150:4 205:2 227:9</p> <p><b>activity</b> 43:3 101:17</p> <p><b>actual</b> 93:25 100:12,15 107:12 108:10 110:25 126:23 183:15</p> <p><b>actuality</b> 53:21</p> <p><b>Adams</b> 99:25 100:14</p> <p><b>add</b> 58:13</p> <p><b>added</b> 134:10,12</p> <p><b>addition</b> 80:16 145:11,16 160:25 168:15 199:13 202:6 208:1</p> <p><b>additional</b> 17:2, 9,11 18:12 109:21 115:20 130:9 134:16 142:1 145:10 148:7 169:3 208:12 218:13, 24 219:10 221:8, 23 223:14 224:23 225:11 240:5 244:12 245:2 255:20</p> <p><b>address</b> 15:19 39:19 42:1 80:15,16,20 154:3 182:25 218:1 224:10 241:1</p>	<p><b>addressed</b> 24:9 25:20 29:2 132:19 229:23</p> <p><b>addresses</b> 177:7 216:21</p> <p><b>administration</b> 20:16 51:3 86:9, 10 98:1 229:18</p> <p><b>Administrative</b> 236:10</p> <p><b>adverse</b> 60:12</p> <p><b>advertised</b> 133:18</p> <p><b>advice</b> 191:24 192:4 193:4,9,20 218:17</p> <p><b>advocacy</b> 134:1 161:21 165:10</p> <p><b>advocates</b> 128:22</p> <p><b>affirm</b> 212:17,18 215:9</p> <p><b>affirmative</b> 213:21</p> <p><b>affirmatively</b> 212:20</p> <p><b>afield</b> 61:9,13 139:22 140:6 153:16 155:8,20</p> <p><b>AFTERNOON</b> 132:2</p> <p><b>agencies</b> 173:3 182:5 190:12,13</p> <p><b>agency</b> 36:21 111:17</p> <p><b>agenda</b> 160:3,6</p> <p><b>agents</b> 262:13</p> <p><b>agree</b> 11:20 43:21 55:10 62:6 78:21,25 79:3,25 80:8 81:4,9,14 82:2,5,9 84:4 86:13 92:17 93:1,8,13,23 96:16,22 100:13,</p>	<p>16,17 108:4 112:1 153:23 170:24 199:19 212:6 241:11 256:3</p> <p><b>agreed</b> 61:11 104:10 155:10</p> <p><b>ahead</b> 41:4 44:14 128:8,9 264:12</p> <p><b>aid</b> 150:2</p> <p><b>aids</b> 66:12</p> <p><b>alerted</b> 119:16</p> <p><b>Alien</b> 120:23 121:7</p> <p><b>Allegheny</b> 67:3 74:4,13 91:8,16 92:8 96:4 103:10,12 108:2 236:9</p> <p><b>alter</b> 97:10</p> <p><b>alternative</b> 39:20</p> <p><b>America</b> 180:17</p> <p><b>analysis</b> 12:20 90:5 113:15,18, 22 114:1,11,19 115:3,8,12 116:8 117:16 118:13, 15,16,19,24 119:4,8 120:2,5, 10,16,17 121:15, 19,24 122:20,22 125:3,11,18,25 126:2 127:7 140:23 141:1,2, 7,13,23 145:8,25 146:10,19 147:3, 5,17,19,21,22 148:17 149:4 150:18,20 163:20 164:1 165:12,15 166:3, 8,23 168:2,8 170:15,18,21 172:8,21 187:15 188:23 189:1,7, 9,12 190:21 191:14 194:1,19,</p>	<p>25 195:16 197:1, 5 199:22 201:16, 17 202:1,9,22 203:7 204:3,19, 25 205:2,10,11 206:3,15,20,21, 22 207:23 208:8, 20 210:14 218:24 221:16, 21 223:8,13 224:12,16,23,25 225:1,11,15 227:11,12 239:14,17,22,24 240:1,5 254:7,8, 10,13 255:13 257:3</p> <p><b>analyze</b> 141:4 185:19</p> <p><b>analyzed</b> 167:12,22 203:19</p> <p><b>announced</b> 135:9,12</p> <p><b>annual</b> 42:13 43:16 90:17 99:2 101:9,17</p> <p><b>annually</b> 43:4</p> <p><b>answering</b> 13:4 194:5 195:9 239:15 251:1</p> <p><b>answers</b> 8:20 16:11,15,16,17 73:4,7</p> <p><b>AP</b> 106:7</p> <p><b>apologize</b> 25:3 30:3 45:5 82:16 86:19 156:25 164:22 209:19 233:14 248:19 251:13</p> <p><b>apparently</b> 11:6 121:16 122:25</p> <p><b>appeared</b> 14:5 116:15 175:11 184:18</p> <p><b>appears</b> 67:14 68:21,23 69:7</p>
--	---	---	---	--

74:16 77:10 80:2 81:11 88:13 104:13 108:4 113:5 135:22 138:12 142:10 237:15 246:14, 17 248:1 250:12 251:25 252:1,7 253:18 255:17, 20 256:6 258:9, 20 259:1	<b>argumentative</b> 195:13 <b>arrived</b> 119:13 <b>art</b> 55:18 <b>article</b> 232:15 234:15,20 <b>ascertain</b> 245:1 <b>Assembly</b> 51:5 90:18 101:10 <b>assert</b> 244:17 <b>asserted</b> 201:25 <b>assigned</b> 20:1 189:21 190:10, 12 <b>assist</b> 155:5 <b>assistant</b> 20:1 <b>Associate</b> 199:21 200:2,9 202:7 <b>Association</b> 128:25 138:21 <b>assume</b> 9:6 233:16 252:18 <b>assumption</b> 79:11 252:20 <b>assumptions</b> 130:8 <b>assured</b> 148:5 <b>Atoulelou</b> 80:20 <b>attached</b> 92:20 93:20 180:5,10 230:9 253:18 254:2 256:4 258:8 <b>attachment</b> 256:9 <b>attempt</b> 138:8, 15 <b>attempted</b> 221:19 <b>attempting</b> 14:2 162:5	<b>attend</b> 137:21 <b>attendance</b> 161:4 <b>attention</b> 51:13 52:3 54:17 117:21 118:2,8 158:9,10 165:25 260:13 <b>attorney</b> 6:20 13:7 143:7 148:11,24 163:8 189:5,6,12 191:16 192:3,16 193:2 194:3 202:17 203:17 238:22 241:10 244:23 253:16 <b>attorney-client</b> 141:16 154:12 155:24 191:17, 20 192:15 194:2 196:14 202:2,16 203:17 204:17 206:4 207:11 208:23 220:10 <b>attorney-work</b> 202:3 <b>attorneys</b> 6:18 13:8 162:14 189:18 190:3 <b>Audit</b> 197:18 198:10,25 199:6 <b>Auditor</b> 197:18 198:11 200:6 201:1 203:7 <b>August</b> 158:8 159:4 242:13 244:8 <b>authentication</b> 149:17 150:10 <b>author</b> 236:13 <b>authored</b> 188:15 198:10 <b>authority</b> 191:18 <b>authorized</b> 243:24 259:9	<b>automatically</b> 196:11 <b>avoid</b> 116:5 <b>aware</b> 17:9,11 18:12 30:20 64:13,17 95:22 96:1,14 115:14, 22,24 121:10 123:9,16 129:16 134:23 153:5 219:21 226:17, 20 237:7 243:16 <hr/> <b>B</b> <hr/> <b>back</b> 25:2 61:21 69:14 70:18 74:8 77:19 85:7 86:8 97:22 99:20 103:9,15 106:25 109:7 116:2 118:11,23 124:5 126:8 131:24 137:19 146:4 150:18 154:6 166:13 196:21 202:23 210:3,11 211:18 213:8,10, 11 215:11,14 216:24 224:19 227:22 241:25 249:12 251:25 259:23 264:10 <b>back-end-query</b> 247:12 <b>bad</b> 126:20 <b>ballots</b> 52:18 126:6,25 127:5 <b>based</b> 11:19 65:11 73:5 81:5 82:9 99:14 106:21 115:25 116:3,13 123:25 130:20 145:7 147:21 175:10 176:5 207:22 210:13 250:20 260:5 <b>basically</b> 42:22 158:13 183:9	255:12 <b>basis</b> 22:24 43:17 72:15 88:10 119:11 <b>batch</b> 17:2,5 18:5 245:18 <b>Bates</b> 50:22 69:4 83:23 197:13 198:23 209:7 242:9 249:7 256:10 <b>Bates-stamped</b> 51:14,23 67:1,5 74:5 77:5 79:24 83:14 84:4 86:1 87:13 89:4,9,16 93:2,22 98:4,9 103:15,20 105:12 107:1,24 109:7 125:23 132:9 167:4 188:4 197:15 198:19 209:21 210:19 211:23 215:15,24 216:25 222:17, 25 229:4 236:4,8 237:10 242:16 249:25 251:22 255:15 257:14 258:19,22 <b>bear</b> 51:17 250:4 <b>began</b> 158:6 <b>begin</b> 11:15 <b>beginning</b> 44:2 86:10 112:17 118:19 239:12 <b>begins</b> 26:18 28:16 250:14,15 <b>behalf</b> 9:25 162:13 <b>belabor</b> 260:18 <b>believed</b> 110:3 146:24 163:12 165:18 <b>believes</b> 168:11 201:10
--	--	--	--	---



<b>benefit</b> 80:10	236:17	<b>bureaus</b> 24:2	63:20 64:19,20	<b>cases</b> 100:17
<b>big</b> 248:25	<b>break</b> 9:10,13	<b>Butler</b> 251:12	89:10 96:7 98:8	117:5 163:14
<b>bipartisan</b>	24:23 25:4 85:1,	<b>button</b> 7:8,9,16	214:9,13 215:21	235:17
138:24	4 112:8,13	<b>buy</b> 72:17	257:5 262:14	<b>caseworker</b>
<b>birth</b> 179:9,14	131:13,16		<b>canceled</b> 63:7,	162:15
182:24 184:4	132:23 187:20		11,12,15,19,22	<b>cast</b> 126:6 127:5
<b>bit</b> 8:5 26:11	<b>breath</b> 6:24	<b>C</b>	64:1,7,14,18	<b>categories</b> 91:1
129:8 137:25	<b>Brennan</b>	<b>C.S.</b> 54:9	65:11 69:23	101:3,8 102:14,
156:9 251:14	258:18,22 259:4	<b>caffeine</b> 9:19,22	70:3,6,8 71:8	16 103:5 217:21
<b>black</b> 45:14	<b>Brewer</b> 244:8	<b>calendar</b> 98:19	78:17,23 79:1,4	<b>categorized</b>
<b>Bless</b> 215:3,4	<b>Brier</b> 56:6,20	101:5 102:3	80:9 81:7,12,15	102:11
<b>blew</b> 15:23 46:5	144:5	<b>call</b> 8:15 22:24	82:6,11,22,23	<b>category</b> 95:3,
<b>blind</b> 141:23	<b>bring</b> 13:20	26:12 119:9	89:6,19 91:12,	10,23 102:22
<b>blow</b> 46:3	118:7 158:8,10	122:15 170:18,	13,18 92:1 93:17	119:24 123:10,
<b>blowup</b> 45:17	162:8 165:24	21,22,23 184:24	94:2,6,14,15	25 137:16
<b>blue</b> 45:10	259:15	212:25 249:17	95:3,9,23 100:1	141:21
<b>Bluestein</b>	<b>bringing</b> 198:5	252:5,8	106:10 117:17	<b>caused</b> 158:15
160:16 161:2	<b>broad</b> 101:16	<b>called</b> 52:8	120:6,12 121:17	<b>causing</b> 162:4
253:5 254:1	137:15 154:14,	111:9 144:21	123:3,7 125:13	<b>caution</b> 16:22
255:8,11	15	170:23 237:6	145:17 212:13,	141:19 220:16
<b>Bluestein's</b>	<b>broadly</b> 176:14	247:12 249:13	15 214:14	<b>cautioning</b>
256:4	<b>broken</b> 217:20	<b>calling</b> 27:2 47:3	215:18 216:5	31:19
<b>board</b> 234:17	<b>brought</b> 44:11	63:9 141:15	251:9	<b>caveats</b> 174:13
245:12	47:5 61:10,25	195:18 208:21	<b>canceling</b> 63:5	<b>CCAP</b> 133:25
<b>boards</b> 21:18	117:20 118:1	<b>calls</b> 27:13,23	257:4	<b>Center</b> 149:25
98:15 149:9	139:22 153:17	30:16 31:7,13	<b>Canvass</b> 89:12	227:10,18
<b>body</b> 129:12	155:21 162:11	32:4 33:4,13	<b>caption</b> 14:20	<b>certainty</b> 234:15
<b>Boockvar</b> 12:1	259:13	37:16 38:3,15,21	<b>captioned</b>	<b>certified</b> 88:7,24
132:14 135:22	<b>Bucks</b> 248:13	39:14 40:2,13	112:24 256:8	89:1 93:15
140:22 142:17	251:12	41:18 55:20	<b>capture</b> 84:20	98:15,17 101:10
144:24 145:19	<b>building</b> 126:21	140:15 148:10	107:21 108:16	<b>certify</b> 98:23,25
149:23 150:8	<b>built</b> 101:10	226:1 241:7,21	<b>captured</b> 64:3	99:12,13,15
223:1,7,25 224:4	<b>bullet</b> 32:17,18,	261:15 263:7	101:7 108:9	101:6,13
227:17 228:1,11,	22 33:6 34:13	264:17	119:15 122:22	<b>cetera</b> 100:3
16 237:16	35:1 188:22	<b>campaign</b>	255:21	109:17
238:15 239:2,18	190:20 204:2	20:13,16	<b>captures</b> 101:4	<b>challenge</b> 6:18
240:11	205:18,24	<b>cancel</b> 58:18,20,	107:11	244:15,17,19
<b>books</b> 52:18	207:20,22 208:3,	25 59:4 64:2,10	<b>capturing</b>	245:5
<b>bottom</b> 7:7	5	65:20 69:9,21	100:18	<b>chance</b> 11:16
68:13 76:17 77:5	<b>bureau</b> 10:12	70:8,23 71:2	<b>care</b> 6:23	26:7 37:1,3
98:5 103:20	19:1,21 20:1,7,	72:8 75:24 76:3,	<b>career</b> 8:6	75:17 245:16
118:19 127:14,	11,13 21:14,21	6,7 80:14 89:11,	<b>careful</b> 111:15	<b>change</b> 35:6
15 149:15	173:6,9,12	12,25 91:3 93:24	<b>case</b> 11:24 12:3,	39:19 42:1
188:17 198:23	174:17 249:19	102:22 119:24	11,14 13:11 70:3	49:17,23,25
	252:16	123:11 216:17	122:24 138:23	
		252:2	174:12 192:11,	
		<b>cancelation</b>	12 202:1	



<p>50:1,4 59:25 63:3 76:11,13 77:14,19 83:4 109:17 110:16</p> <p><b>changed</b> 83:5, 21 84:5,9 255:23</p> <p><b>characterization</b> 138:25</p> <p><b>characterize</b> 92:19,25 181:17 221:15</p> <p><b>characterized</b> 117:15 131:3 146:7 163:2</p> <p><b>charge</b> 25:17 30:6</p> <p><b>chart</b> 87:9 98:12, 13</p> <p><b>Chat</b> 7:5,8,16</p> <p><b>check</b> 29:16</p> <p><b>checking</b> 254:3</p> <p><b>chief</b> 19:10,19 141:3 142:14 143:14,16 146:11 160:18, 25 186:23 187:3 189:8,14,15,17, 20 190:2 193:18 196:10</p> <p><b>choices</b> 111:25</p> <p><b>Chris</b> 213:13 258:18 259:4</p> <p><b>circular</b> 129:8</p> <p><b>circumstances</b> 196:19</p> <p><b>citizen</b> 63:24 64:7,16,25 65:2, 12 69:10,21 70:8,24 72:8 76:7 78:18 79:2 80:9,14 81:13 82:7,12,24 89:25 91:5,12,18 93:24 94:3,7,8,14 95:4, 10,24 102:22 106:11 119:25</p>	<p>121:1 123:4 125:14 172:14 221:14 222:10, 12,14 252:3</p> <p><b>citizens</b> 78:23 81:8 95:11 115:15 121:18 125:7 158:20 165:19 212:21 220:25 221:10 230:4</p> <p><b>citizenship</b> 119:18 120:12 121:12,21 141:11 161:23 162:5 168:20,24 219:19 222:5 225:18 226:14, 21 228:14,20 236:19,25 237:7 240:10 260:17 261:13 262:16</p> <p><b>City</b> 232:11 234:12 254:6</p> <p><b>Civic</b> 20:13</p> <p><b>claimed</b> 262:13</p> <p><b>claiming</b> 191:19</p> <p><b>claims</b> 234:3</p> <p><b>clarification</b> 10:20</p> <p><b>clarify</b> 9:2 10:17, 18 100:19 195:24</p> <p><b>classify</b> 70:23 71:3</p> <p><b>clear</b> 8:20 27:9 32:25 34:20 56:7 57:20 58:11 59:7 62:13 65:16 72:5 73:6 87:8 97:1 103:22 148:16 172:22 177:23 178:4 181:4,16, 21 207:1 226:10 228:12 264:9</p> <p><b>click</b> 7:13 104:19,21 105:1</p>	<p><b>clicked</b> 105:17 107:7 109:10</p> <p><b>client</b> 12:13,19 67:2 74:3,12 79:22 139:17 146:18,20</p> <p><b>clients</b> 161:23 162:1,2</p> <p><b>clip</b> 157:16 169:12</p> <p><b>close</b> 168:12,22 257:18</p> <p><b>close-up</b> 233:17</p> <p><b>closely</b> 140:11 181:11</p> <p><b>closer</b> 11:5 159:20</p> <p><b>coaching</b> 263:13</p> <p><b>code</b> 36:4 84:21</p> <p><b>coded</b> 64:21 94:6</p> <p><b>coffee</b> 9:19</p> <p><b>collaboration</b> 168:12,22 172:3</p> <p><b>collaborative</b> 182:2</p> <p><b>colleague</b> 13:20</p> <p><b>colloquy</b> 157:10</p> <p><b>column</b> 87:22 89:20,24 90:10 101:22</p> <p><b>columns</b> 88:4,9, 22 90:4 247:17 255:21</p> <p><b>commercial</b> 203:14</p> <p><b>commission</b> 55:2,6 61:2</p> <p><b>commission's</b> 55:3</p> <p><b>Commissioned</b> 20:20</p>	<p><b>Commissioner</b> 19:1 113:3 118:3 119:1 156:5,13 157:1,25 158:2 159:3 160:9,15 161:1,2,12,15, 16,18 162:8,10, 11,18 163:2,19 165:3,11,17 169:13,18,20 170:8,15,20 171:11,13 172:22 174:13 176:25 178:5 185:17,20 186:8 187:9 220:21 253:13 255:10</p> <p><b>commissioner's</b> 55:11</p> <p><b>commissioners</b> 128:25 133:25 138:20 231:13 234:12 254:6,9</p> <p><b>Commissioner s'</b> 254:11,16</p> <p><b>commissions</b> 10:13 18:18 19:2,21 20:2 58:10,22,23 65:18</p> <p><b>committed</b> 167:7 168:15</p> <p><b>committee</b> 112:25 113:11 128:23 146:5 151:10 186:12 187:11</p> <p><b>common</b> 221:3, 5 231:9</p> <p><b>Commonwealth</b> 21:1,3 37:18,21 38:4 39:9,17 60:23 61:1 62:14 96:8,12 98:6 149:6 176:4 199:24 201:16 202:11,13,19 229:24</p>	<p><b>Commonwealth's</b> 199:23 202:10</p> <p><b>communicate</b> 117:8 142:9 235:21 243:25</p> <p><b>communicated</b> 135:23 142:16 185:4,5</p> <p><b>communication</b> 117:3 136:9,24 143:10 148:1,3, 23 161:11,14,15 164:17 262:11</p> <p><b>communication s</b> 16:20 18:8 28:17 31:13,19 113:8 135:15,18 136:1 141:20 143:7 147:15 148:11,15,25 161:3,5,9 164:5, 9,20 188:19 189:6 191:15,17 193:14 194:1 205:9 207:19 220:15 231:23 243:20 258:2,5</p> <p><b>communication s/risk</b> 238:13</p> <p><b>comparable</b> 92:20</p> <p><b>compared</b> 177:18</p> <p><b>comparing</b> 174:6 175:9 188:24 199:22 202:9</p> <p><b>comparison</b> 142:24</p> <p><b>Compel</b> 207:3</p> <p><b>compilation</b> 87:5</p> <p><b>complaint</b> 66:25 157:9 169:15,16</p> <p><b>complete</b> 60:17</p>
---	--	---	---	---

<b>completed</b> 61:3 101:5 129:22 146:20 166:2	<b>conduct</b> 41:21 42:2,4,13,15,19 55:21 57:9 150:16 181:10 183:22 186:23 188:23 193:19 194:19 195:15 199:22 202:9 223:13 224:11 239:22	39:21 139:18 183:25 190:5 192:3	<b>controlling</b> 26:10	98:25 99:14
<b>completely</b> 8:11 9:18 43:15 174:10 175:19	<b>conducted</b> 36:17 39:3,10 40:5 42:18 120:19 125:19 141:2,23 142:13 145:8 166:7 167:19 173:5 175:7 182:5 189:8 191:15 206:3 217:6,9 225:12 254:8	<b>consistent</b> 61:13,25 80:12	<b>convenient</b> 85:3	<b>correctly</b> 66:6 82:1 99:8 101:7
<b>completing</b> 257:18	<b>conducting</b> 42:7 150:3 154:23	<b>Consolidated</b> 54:16	<b>cooperating</b> 166:24	<b>correspondenc</b> <b>e</b> 52:19 57:13,17 62:7 104:15 107:2,7,10,12, 17,18,22 108:10, 14 136:11 166:21 255:2
<b>completion</b> 125:11 257:2	<b>confident</b> 61:16	<b>consortium</b> 150:1,24	<b>copied</b> 243:11	<b>correspondenc</b> <b>es</b> 57:7,11
<b>complied</b> 38:19	<b>confirm</b> 29:20 65:6 72:10 81:25 83:9 84:8 93:6 100:3 141:24 210:3 226:21	<b>constantly</b> 155:15	<b>copies</b> 62:7 162:17,21 214:21	<b>corrupted</b> 249:11
<b>comply</b> 37:13, 19,25 38:11,13, 23 47:1	<b>confirmation</b> 39:21 140:25 190:25 191:1 204:5 205:6,15, 16,24	<b>consult</b> 23:2,19 218:18 242:1	<b>copy</b> 7:6 11:14 15:6,15 24:7 27:8 30:20 36:3, 24 46:11,13 51:16 56:3 61:3, 4 68:8 83:16,19 91:22 114:4 133:15 153:1 166:12 190:15 197:17 213:4 216:21 223:22 229:2 231:20 233:11 246:25 249:9 259:11,17, 19	<b>Cortés</b> 86:4,5, 14 92:16 93:4 134:8 158:4 160:9,14 161:1, 14 166:22 185:11,14,21 186:16
<b>computer</b> 13:3	<b>confirms</b> 238:11	<b>consultation</b> 31:17 141:3 242:4 245:10	<b>copying</b> 36:15	<b>cost</b> 36:16 72:19
<b>conceded</b> 226:15	<b>confused</b> 100:25	<b>consulted</b> 25:21 30:10 192:10	<b>corner</b> 78:11 80:3,6	<b>counsel</b> 14:24 16:6,7,8,16,21 17:23 23:19 25:21 30:11 31:13,20 141:3,6 142:14,16 143:15 145:8 146:11 147:15 155:5 160:18,25 167:19 186:23 187:3,7,14 189:8,15,16,17, 20,21,22 190:2, 10 191:13 192:10,12 193:18 196:10 204:20 206:4,17 207:12,16 242:1, 4 246:5 262:12 263:20
<b>concern</b> 56:14, 17	<b>conjunction</b> 173:7 174:18 217:9 253:12	<b>contacted</b> 160:9 217:11,13, 14	<b>corporation</b> 20:7	<b>counsel's</b> 22:11,13,18 23:2,6 143:16 148:5
<b>concerned</b> 95:9,12 131:4	<b>connect</b> 119:6	<b>contacts</b> 136:16,19	<b>correct</b> 16:1 27:15 43:24 46:14 52:11,20 55:5 60:4,15 65:24 68:3,4 72:18 75:16 91:4,6 94:11 97:19 103:18 104:11,12 112:2 120:7,9,14 121:22 122:22 124:10,11 125:8 127:9 128:17 135:13 136:21 167:10 177:13 180:5,6,8 184:15 199:25 210:16 241:13 256:5	<b>count</b> 247:25 248:13 250:22
<b>concerns</b> 117:12 118:5 161:25	<b>connection</b> 8:25 166:20	<b>contained</b> 49:15 72:13 82:19 99:2,10 100:25 122:12 181:12 206:8 253:23	<b>corrections</b>	<b>counties</b> 41:25
<b>conclude</b> 106:9, 18,21	<b>considerable</b> 263:24	<b>contend</b> 192:25 193:12,25 197:5 207:12		
<b>concluded</b> 265:5	<b>considered</b>	<b>contents</b> 259:5		
<b>concludes</b> 264:25		<b>context</b> 239:16		
<b>conclusion</b> 27:2,13,23 30:16 31:7 32:5 33:4, 13 37:16 38:3, 15,21 39:14 40:2,13 41:18 47:4 63:9 116:18 131:6 206:23 241:8,17,22 261:4,5,16 262:19 263:8 264:18		<b>continue</b> 150:15 206:25		
<b>conclusions</b> 195:18 263:11 264:2		<b>continued</b> 122:9		
<b>condense</b> 262:7		<b>continuing</b> 223:8 224:25		
		<b>control</b> 59:8,11		

<p>42:1,4,6,10,22 43:7,11,13 47:12 48:10,11,13,19 49:2,8,13 50:10 52:14 53:13 55:14,24 57:11, 19 58:7 60:10 62:9,16 66:5,12 73:13 84:20,22 87:24 90:11,13 93:17 94:4 96:8 97:2,10,11 98:21,22 99:5,6, 12 100:8 109:1,4 117:20,22 118:7, 10 119:12,22 122:8 124:15,16, 18,20 128:16 150:16 154:23 166:14 214:8,10 218:12,16,19 219:6,11,17 225:8 230:17,21 231:16 239:13 240:16 244:10, 18,21</p> <p><b>counties'</b> 42:19 50:11 66:9 95:17</p> <p><b>county</b> 21:17 37:22,23 38:5,6, 8,12 41:20 44:3, 5 49:20,25 50:8, 9,10,14 53:10, 18,23 58:2,22,23 59:23,24 60:2,22 61:2 62:15 63:25 64:1,9,12,18,23 65:4,15,19,21 67:3 68:1,2 70:19,21,25 71:4,13 74:4,13 80:1,4 82:1,3,22 89:2,21 91:8,15, 16,25 92:9 94:17,23 95:7,21 96:4,5,9,18 97:4, 17 98:15,18 99:24,25 100:14 101:4,6,11,12, 15,18,23 102:6,9 103:10,12 104:22 105:8 106:22 108:2,15</p>	<p>109:22,24 110:2 116:1,15,22,24 117:9,11,19,21, 24 118:1 119:8 122:14 123:9 128:4,24 131:3 133:10,24,25 138:20 146:8 149:9,10 160:16 165:1,5,23 166:11,16 211:16 213:22 214:2 216:4,7,8, 10,13,16 217:10 218:10 221:23 223:1 231:13,22 236:9,25 243:4 245:8,11</p> <p><b>county's</b> 41:20 48:4,17 59:21 97:12 108:23 255:13</p> <p><b>couple</b> 11:10 19:25 135:8 164:20 231:3 236:3 257:15</p> <p><b>court</b> 6:16,17 7:2 8:15 14:16 25:9,11 144:6 157:13 229:12, 19 230:2,10 231:6,12,14,15, 17 263:6</p> <p><b>courts</b> 231:8</p> <p><b>cover</b> 51:3 86:14,20,22 92:15 93:3,14 121:24,25 249:6 254:1</p> <p><b>covered</b> 155:23 194:2 195:10 196:11,14 202:2</p> <p><b>covers</b> 96:11</p> <p><b>COVID-19</b> 135:4</p> <p><b>created</b> 252:13 253:19</p> <p><b>criteria</b> 75:24 76:2 77:21 78:1, 2,7 80:13 81:5</p>	<p>83:9 175:11 176:5 184:9</p> <p><b>crux</b> 20:22</p> <p><b>crystal</b> 58:11</p> <p><b>currency</b> 36:18 39:4,11,25 40:6 41:15</p> <p><b>current</b> 18:16 20:8 21:2,12 23:22 40:10</p> <p><b>Custodio</b> 237:21 238:3</p> <p><b>cut</b> 76:4 251:4</p> <p><b>cuts</b> 8:25</p> <p><b>Cybersecurity</b> 151:11</p> <hr/> <p><b>D</b></p> <hr/> <p><b>D00040</b> 98:5</p> <p><b>D1</b> 50:22</p> <p><b>D182</b> 132:9</p> <p><b>D184</b> 222:17,25</p> <p><b>D185</b> 222:17,25</p> <p><b>D186</b> 209:21</p> <p><b>D190</b> 210:19</p> <p><b>D198</b> 210:19</p> <p><b>D2091</b> 237:10</p> <p><b>D2093</b> 237:11</p> <p><b>D215</b> 188:4</p> <p><b>D217</b> 211:23</p> <p><b>D2170</b> 242:9</p> <p><b>D2171</b> 242:16</p> <p><b>D2175</b> 242:10</p> <p><b>D226</b> 188:4</p> <p><b>D241</b> 236:4,8</p> <p><b>D40</b> 98:9</p> <p><b>D46</b> 50:22</p> <p><b>Dan</b> 56:6</p>	<p><b>darker</b> 233:10</p> <p><b>data</b> 49:15,16 62:19 88:16,17, 21 90:17,19 92:24 93:2,14,21 95:14,19 97:8,9 98:14,18,23 99:1,15,18,21 100:23 101:12, 19 105:21 107:14,15 111:5 119:5,15 120:22 122:12 125:12, 19 127:2,10 140:23 141:1,5, 24 142:2,17 146:19 147:5,6, 11,17 149:4 150:2 177:5 180:23 181:12 182:9,15,21 183:9,24 188:24 195:16 197:1 199:23 202:10 205:11 221:7 228:13 246:21, 23 247:16,19 248:4,17 250:19 256:9</p> <p><b>database</b> 12:21 52:24 100:6 101:2 113:16 114:12 120:3 121:25 122:2 124:2 149:18,21 150:11 169:24 170:12 171:2 172:13 173:5 175:9,10 176:7 177:3,18 178:18 179:2,3,13,16 181:13 184:19 204:12 221:8 222:8 225:17,23, 24 226:10,20 247:21</p> <p><b>databases</b> 174:6,11 175:12 178:9 182:6 184:18 188:25 199:24 201:16 202:11,13,19 203:5,12,13,14</p>	<p>226:3,4,17</p> <p><b>date</b> 17:4 60:24 63:3 72:12 76:10,13,16 77:14,19,21 80:24 81:1,19 83:3 84:9 87:22, 25 88:15 90:24 91:8 107:16 108:3,16 124:9 163:16 169:13 179:9,13 182:24 184:4 210:4 225:13 255:22, 23 256:1</p> <p><b>dated</b> 24:9 85:22 86:21 132:8 151:15 198:11 215:24 223:4 232:16 236:5 237:18 242:12 259:23</p> <p><b>dates</b> 79:19 80:21,23 82:25 86:8 109:17 110:17 251:7</p> <p><b>day</b> 56:9 150:16 208:25 264:9</p> <p><b>day-to-day</b> 20:15 21:16,22, 25</p> <p><b>dead</b> 233:23,25</p> <p><b>deadline</b> 42:14</p> <p><b>Dear</b> 137:5</p> <p><b>death</b> 89:21 100:3 102:15</p> <p><b>debate</b> 192:6,21 196:4,18</p> <p><b>decade</b> 243:19</p> <p><b>December</b> 29:2, 9 31:3 34:3,8,21 35:2 44:5 81:6 83:6,22 84:7 102:4 151:15 156:20 197:17 198:12 246:6</p> <p><b>decide</b> 147:11, 19</p>
--	--	--	---	---

<b>decided</b> 128:18 134:5 205:5,23	24 48:18 49:3,6, 14,16,17,24 50:4,7,12 51:10 52:21,25 53:4,7, 11,16,22 55:2,7, 8,10 58:5,12,21, 24,25 59:25 60:4,15 65:8,23 66:4,8,10 67:21 70:20 71:14 72:14 89:21 90:13,22 92:3,7, 10 93:4,9,13 95:5,8 96:20,22, 25 98:16,20 99:3,4,17,25 101:21 108:25 113:15,21,25 114:10 115:1,14, 22 118:4,8,12,23 119:10 120:2,15, 17,19 123:25 125:5 127:18 128:3,15,21 133:24 135:14, 19,23,25 136:17, 19,24 139:3,6 142:18,22 143:3, 18 144:8 145:1 147:4,6,10,18,20 149:16 150:9 151:20 152:21 153:2,6 154:2,16 155:2,4,14,16 156:16 158:4 159:2,12 160:20 161:12,16 163:18,20,25 166:23,25 167:6, 8,12,22 168:2, 11,15,23 169:21 170:8,10 171:18, 19,22 172:24 173:7,10 174:18, 20,21 175:13 179:12 180:1 181:8,11,15,23, 24 182:15 183:16,18,24 184:11,12,23 185:4,6,22 186:2 187:13 188:22 189:16,19,22 190:6,11,19	191:3,13,24 192:2,10 193:16 194:17,18 195:3 196:9 199:6,19 200:5 201:2,4, 15,18,20 203:4 204:13,21 205:4, 19 206:11,22 207:17,23 208:6, 9 210:15 211:3 213:15 214:6,25 216:1,6,11,18 217:13 218:7,20 219:18 220:1 221:3 223:7,10, 15 224:11,15 226:12 229:24 230:18,22 231:7, 18,19 234:7,10, 11 236:9 237:3 239:14,21 241:20 243:24 246:6 251:19 254:8,12 256:22 258:10 259:8 261:10,25 262:10 264:21	85:13 112:10 132:3 151:4 157:5 169:6 187:25 192:6 197:20 209:2,15 222:18 226:22 229:7 232:5 235:25 237:12 241:23 242:5 246:8 257:19 258:17 260:5 265:5	18 244:14 245:10
<b>decides</b> 129:9			<b>determinations</b> 58:10 65:18	
<b>decision</b> 31:9, 16,21 32:1 70:22 71:3 207:15 242:4			<b>determine</b> 23:3, 7,20 30:11 42:22 100:9 113:17 114:12 120:3,6 123:24 134:15 141:8 142:18,19 147:7 166:13 167:24 171:3 172:9 173:21 175:10,13 176:5, 8,10 178:24 206:12 218:18 221:9 228:13 244:12,25 245:8 254:16,19,22	
<b>decision-</b> <b>making</b> 114:23 115:4			<b>determined</b> 63:23,25 64:6,15 65:1 95:24 133:5,7 144:25 208:19 221:1 239:5 256:16	
<b>declination</b> 36:20			<b>developed</b> 263:6	
<b>declined</b> 201:21			<b>dictate</b> 221:5	
<b>deeper</b> 125:24 126:1 127:7			<b>dictated</b> 221:4	
<b>Defendant's</b> 227:1	<b>Department's</b> 20:15 41:1,5,14 130:5 152:7,13, 15		<b>difficult</b> 251:14	
<b>define</b> 57:15	<b>departments</b> 182:2		<b>difficulty</b> 248:7	
<b>defined</b> 39:18	<b>departure</b> 86:11		<b>digits</b> 8:5 180:19	
<b>definition</b> 195:14 204:7	<b>Depasquale</b> 198:11		<b>direct</b> 32:8 51:13 52:3 54:17 113:14 161:15 211:22 253:1 260:13	
<b>Degraffenreid</b> 21:7,9	<b>depend</b> 22:20 247:16		<b>direction</b> 207:11	
<b>deliberative</b> 154:11 155:23	<b>depending</b> 35:11 247:18,21		<b>directives</b> 42:5, 9	
<b>delve</b> 155:23	<b>depends</b> 59:11		<b>directly</b> 23:24 117:6 119:7 216:10 219:22 224:19 231:17 255:3	
<b>delves</b> 220:8	<b>deposed</b> 7:24 8:3		<b>Director</b> 173:12	
<b>delving</b> 145:5 193:12 201:24	<b>deposition</b> 11:15 13:9 14:10,18,21,24 16:5 18:12 24:15 28:21 36:1 44:21 50:16 54:4 66:14 73:17 79:16			
<b>demonstrated</b> 82:21 225:6				
<b>dep</b> 11:18				
<b>department</b> 10:1,5,7,10 12:13 13:13 14:22 16:7,12 18:18,22 19:7,16 20:4,6,21,25 23:15 25:12,23 26:23 27:20 29:11 30:13,18, 22,24 31:25 37:5,12,17 42:5, 16 43:6,10,12 44:18 47:14,19,				

258:1,4 <b>Directors</b> 223:2 <b>disagree</b> 62:6 114:7 144:4 235:9 <b>disappeared</b> 45:19,22 <b>disclose</b> 16:22 31:19 141:19 189:11 220:16 <b>disclosed</b> 192:19 194:23 195:8 <b>disclosing</b> 145:6 148:2,15, 25 205:8,9 <b>disclosure</b> 20:17 36:8 141:16 168:5 179:21 197:6 204:17 208:22 239:10 <b>discoverable</b> 192:18 <b>discovery</b> 11:7 13:13 16:11,15, 21,25 17:12 18:1 31:14 33:16,20 34:2 66:25 79:23 137:18 143:24 192:17 193:1 194:4 196:17 202:16 203:20 207:14 220:9 251:1 <b>discuss</b> 134:3 187:2 <b>discussed</b> 52:24 81:18 122:7 161:17 165:12 171:12 187:3 212:8 247:4 263:16 <b>discussing</b> 205:9 <b>discussion</b> 100:5	<b>discussions</b> 116:1,3 118:9 134:20,21,22 254:23 259:4 <b>display</b> 168:20 <b>displayed</b> 168:24 <b>distance</b> 15:13 <b>district</b> 229:12, 19 230:1,2 231:6 244:23 <b>Districts</b> 104:14 <b>diversity</b> 138:9, 11 <b>Division</b> 10:12 19:10,19 236:10, 14 <b>divulge</b> 16:20 <b>divulging</b> 111:17 <b>DMV</b> 84:19 <b>Docket</b> 12:1 24:7 66:24 <b>doctrine</b> 141:17 191:21 192:16 194:3 195:12 196:15 202:17 203:18 204:18 208:23 220:11 <b>doctrines</b> 206:5 <b>document</b> 15:15 16:1 25:7 35:22 74:1 79:7, 20 86:25 87:17 97:25 103:24 110:4 112:9 113:6 114:6,8,15 153:14,15 167:4 188:4,7,13,14 191:6 194:22,24 195:22 197:14 198:13,15 206:9 208:16 258:14, 21 <b>documentation</b> 17:12 62:14 71:23	<b>documentation</b> s 158:19 <b>documents</b> 11:4 16:24 17:3, 6,10,13,15,17, 20,23,24,25 18:6,13 32:10 33:10,14 34:1,3 103:10 109:5,18, 19,21,24 113:7 137:9,12,16 152:22 162:9,11 164:15 245:15, 18 248:21 260:15 261:7,11, 17,23,24 262:5, 10,25 263:3,8 264:13 <b>DOS</b> 199:1,10,18 200:22,23 <b>DOTIA</b> 111:10, 14,25 <b>double</b> 8:4 212:16 217:2 <b>download</b> 183:7 <b>downloaded</b> 45:17 183:5 <b>downloading</b> 7:15 <b>dozen</b> 24:3 169:3 <b>dozens</b> 72:2 234:3 <b>draft</b> 113:9 254:2 <b>drafted</b> 151:25 152:5,14 <b>drafting</b> 151:20 153:7 <b>drill</b> 126:11,17 <b>driver's</b> 158:16 167:12 168:3,4 169:22,25 170:11,12 177:6, 8 178:18 179:3, 15,22,23 180:3, 4,9,14,17,20	184:4 222:4 238:24 255:23, 25 <b>drivers'</b> 171:2 <b>drives</b> 130:6 <b>droning</b> 263:13, 22 <b>due</b> 94:14 116:16 119:17 120:11 <b>dumped</b> 260:6 264:5 <b>duplicate</b> 97:9 <b>duties</b> 20:9,10, 14 21:10 60:11 66:6,13 154:24 <b>duty</b> 66:9 <b>dwalsh@</b> <b>mbklaw.com.</b> 15:21	16:10 20:6 24:3 92:8,21 118:4 122:8 156:4,9 200:17 225:15, 20 240:3 241:25 247:4 253:9 254:24 259:25 260:14 <b>early</b> 86:11 <b>easier</b> 15:24 <b>ed</b> 192:10 <b>effect</b> 73:16 <b>effective</b> 115:21 <b>effort</b> 65:5 149:19 150:11 182:2 <b>efforts</b> 66:9 155:6,13 156:1 <b>eighty-six</b> 212:12 <b>Eitan</b> 144:21
<b>E</b>				
<b>E-I-T-A-N</b> 144:21				
<b>e-mail</b> 11:6 15:17,19 18:8 57:22 132:8,13, 16 136:14,15,16 137:4 144:23 148:16 149:15 150:8,13 164:11 212:24 223:1,25 224:5 228:1,15 237:16,21,25 238:1 239:2,13 242:12,19,22 243:9,11 244:7 245:19 246:6 253:5 254:2 255:11 256:5,8, 18 257:25 258:8, 19 259:1,2,3,5				
<b>e-mails</b> 136:5 164:4,20,25 243:20				
<b>earlier</b> 15:4				
<b>election</b> 20:12, 16 21:18 37:22, 23 52:18 53:3 63:23 64:5,15, 23,25 81:16 88:25 89:2 101:11 105:9 116:1,15,22,24 117:11,19 132:19,25 133:10,24 137:5 146:8 149:10 173:12 188:6 194:14 202:25 210:12 211:11, 16 213:22 214:2 216:4 218:10 221:24 223:1 230:11 231:22 234:21,25 243:4 244:24 245:12 249:19				
<b>election-related</b> 52:16				
<b>elections</b> 10:12, 13 18:17 19:2, 19,21 20:2,11,12				



21:14 63:16 88:8 98:15 106:12,16, 24 139:10 173:6 233:6,21 234:17 235:5,14,18 236:10 252:16	<b>engaged</b> 141:6 155:4,5,17 186:22	<b>essentially</b> 48:17 52:23 98:20 106:1 245:15	108:3 201:2,4	259:23 260:9 262:23
<b>electors</b> 12:22 19:11 21:13 43:22 47:11 48:9,16 199:7	<b>engagement</b> 20:14 192:14	<b>Essohouna</b> 80:20	<b>exhibit</b> 7:6,12, 14 13:19 14:17, 18 24:6,15 25:6 28:20,21 29:1,8 31:11 32:15 34:17 35:1,5,18, 25 36:1,24 39:2, 6 44:21,24 45:2 46:12 50:16,19, 20 51:20 54:2,4, 14 56:4,9 66:14, 16,23,24 68:9 73:17,20,22 74:11 75:3 77:3 79:13,15,16 83:3,13,16 84:25 85:13,17,18,25 86:18 91:11,23 92:14 97:22 103:10,13 104:10 105:11 107:1,24,25 112:4,10,22,24 114:4 127:13 131:12 132:3,7, 13,22 133:15 140:21 145:13 149:14 151:2,3, 4,8 153:1 156:18,19,21,25 157:5 166:20,21 167:2 169:6,9, 10,12 187:18,25 188:3 190:15,18 194:7,9 197:8, 17,20 198:9 200:13,18,19 202:5,23,24 203:21 207:21 209:2,4,15,16, 19,20 210:11,17, 23 211:18 212:8 213:3 215:14,23 216:24 222:16, 18 223:22 224:24 226:22, 25 227:25 228:2, 23 229:4,6,7 230:14 232:5,7 235:25 237:10, 12 242:5,8,9,16, 25 245:14,15,17 246:3,4,8 257:16	<b>exhibits</b> 7:4,18 56:13 96:5 224:20 225:6 236:3 246:5 260:2,7
<b>electronic</b> 135:24 137:7 145:22 149:24 227:10,18	<b>English</b> 169:4	<b>establish</b> 48:9 75:12 183:24 184:6		<b>exist</b> 26:3 31:4 32:2 33:2,10,17, 23 34:3,25 137:9,12,16 149:5 260:25 261:11,24
<b>element</b> 149:3	<b>enhancements</b> 115:2,20	<b>established</b> 103:17 127:21 129:12		<b>existed</b> 34:7 225:23 243:17, 18
<b>elements</b> 12:11	<b>enlighten</b> 61:18	<b>establishing</b> 127:18		<b>existence</b> 26:25 28:15 34:15
<b>eligibility</b> 140:25 244:16 262:16	<b>ensure</b> 41:11	<b>Eugene</b> 198:10		<b>expand</b> 45:24 126:17
<b>eligible</b> 36:19 39:5,12 40:9,11, 25 234:22	<b>ensuring</b> 21:24 36:18 39:4,11 40:5	<b>evaluating</b> 130:1		<b>expanding</b> 119:11
<b>employees</b> 128:15	<b>enter</b> 62:15 64:24	<b>evening</b> 265:1		<b>expect</b> 65:4,7 117:5 139:16 176:20 183:14 214:18 234:16 246:21 251:21
<b>enable</b> 60:10 84:20 150:16	<b>entered</b> 60:24 64:22 70:9,12 82:1 124:9	<b>evidence</b> 192:11 220:23 234:4		<b>expectation</b> 64:9 95:19
<b>enacted</b> 47:8	<b>entire</b> 40:3 46:20 87:5 96:12 117:17 121:25 176:4 183:8	<b>exact</b> 75:15 86:8 127:24		<b>expected</b> 65:21
<b>enclosure</b> 229:22	<b>entirety</b> 195:21 248:7	<b>EXAMINATION</b> 6:4		<b>experience</b> 7:1
<b>encompass</b> 145:13	<b>entitled</b> 188:5 264:3	<b>examine</b> 113:19 178:6		<b>expert</b> 141:6,23 142:4,5,6,7,9,16 143:19,20 144:2 145:8 146:10 147:6,11,17 167:19 188:23 189:9,23 190:19 191:8,13,15,16, 25 192:13 193:2, 4,6,7,9,14 194:2, 17,18,23 195:4, 7,14,15,21,25 196:3,9,10,12 197:4 199:21 200:12,16 201:7 203:6,18,19 204:19,25 205:10 206:3,16,
<b>encourage</b> 61:13,24 62:4 140:11 141:18	<b>Entitlement</b> 120:24	<b>examined</b> 6:3 178:25		
<b>end</b> 98:19 99:20 102:2 119:13 124:5 126:9 149:16 158:21 170:2 178:22 179:12 223:15 234:19 248:8 259:14 260:2	<b>Entitlements</b> 121:7	<b>examples</b> 162:11 254:25		
<b>ended</b> 44:5 221:22	<b>entry</b> 24:7 66:24 80:23	<b>excel</b> 183:5,14 247:20 253:17 254:2		
<b>engage</b> 156:2 192:5,20	<b>ERIC</b> 149:18,20, 24 150:6,10,12, 15,20,21,23,24 223:12,16,19 224:2,8 227:10 228:9,12,13,16, 19 239:23 240:7, 9,12	<b>excerpt</b> 38:25		
	<b>error</b> 60:3,4,5,12 94:10,15,22,25 95:4,25 102:10 137:6,10,13 145:21 146:5	<b>excess</b> 170:1,13		
		<b>excluded</b> 238:12		
		<b>excuse</b> 74:18 84:6 115:16 174:21 207:24 224:24 258:2		
		<b>executive</b> 20:24 21:2 103:12		

20 207:9,10,16, 23 208:8,19 210:13 222:7 224:23 239:14, 17	101:19 <b>extracts</b> 98:20 <b>eyesight</b> 45:6	<b>field</b> 69:19 70:1 73:10 111:9,23 <b>file</b> 11:8,9 60:17 207:3 237:1,4,6 254:2,4 255:7 <b>file'</b> 236:20 <b>files</b> 60:18 219:5,8,9,17 240:16,21,23 <b>filings</b> 12:8 13:11,12 <b>filled</b> 61:5 84:17 <b>Finally</b> 151:19 <b>finance</b> 20:13, 16 <b>find</b> 16:24 61:4 97:15 101:24 123:24 254:2 <b>finding</b> 161:25 <b>fine</b> 9:11,23 15:18 112:16 131:22 233:18 <b>Finish</b> 128:9 <b>finished</b> 6:19,20 30:4 260:3 <b>firsthand</b> 94:16 227:17 <b>fit</b> 102:24 119:23 <b>Fitzgerald</b> 103:12 108:2 <b>five-minute</b> 187:20 <b>five-year</b> 39:20 42:2 89:11 235:13 <b>fix</b> 24:20 <b>Florida</b> 221:19 222:2 <b>focus</b> 116:9,11 178:14 <b>follow</b> 43:12 65:10,14 142:1 148:7 218:13,20	251:25 <b>follow-up</b> 164:4, 9,17 <b>font</b> 45:10 <b>forget</b> 224:20 <b>form</b> 12:7,15,18 23:11 25:14,18 26:5 27:1,12,22 29:13 30:8,15 31:6 33:3,12 34:9 35:9 37:15 38:14,20 39:13 40:1,12 41:3,17 44:9 47:3,22 48:21 52:10 53:24 57:4 59:3, 15 60:1,20 61:9 62:11,23 63:8 65:3,13 66:7 67:23 69:24 70:14 71:21 75:21 78:9,24 79:6 81:10,17 82:4,17 83:7 90:15 91:14,21 92:5 93:12 94:9 101:14 102:1,23 103:6 105:2,22 106:13,20 107:13,20 108:12,22 109:20 110:1,6 111:3 114:6 116:20 117:1 119:19 120:8,13 121:9 122:23 123:15 124:6 125:9 126:10 130:19 131:1,8 135:16 136:3,13, 22 137:11 138:17 139:8 142:12,21 143:6, 21 145:2 146:21 147:13,23 150:14 152:8,16 153:19 155:22 156:14 162:19 163:6,23 164:2, 7,19 165:20 167:14 168:9 170:17 171:7,17	173:2 174:3 175:25 176:17 177:12 178:1,21 179:17 180:12 181:1 182:11 183:17 184:16 185:24 186:6 190:7 194:20 200:14,24 201:22 208:15 211:8,13 214:17 215:6,19,20,23 216:2,21 217:16 218:2 219:2,20 222:6 224:7 225:21 226:1,19 228:17 234:13 235:8 238:21 241:15,24 244:2, 5,20 247:14 253:11,18 257:9 258:24 261:3,15 262:18 263:2 <b>formal</b> 130:3 <b>formally</b> 129:12 <b>format</b> 246:16 <b>formatted</b> 105:25 <b>forms</b> 216:9,12 <b>forum</b> 196:5,6 <b>forward</b> 76:16 211:15 213:24 231:21 <b>forwarded</b> 213:21 214:1 216:3 <b>found</b> 119:2 121:15 158:13 184:25 <b>Foundation</b> 6:8 11:25 29:10 67:3 79:23 86:3,15 139:18 <b>Foundation's</b> 24:8 <b>frame</b> 252:19 <b>fraud</b> 234:4
--	---	--	---	--

<p><b>free</b> 26:12</p> <p><b>Friday</b> 132:8</p> <p><b>front</b> 13:2 39:2 48:7 56:2,8,22 68:12 74:11 77:4 83:1 89:18 92:14 128:3,12 129:2 170:7 188:8 203:1,22 210:23 211:19 222:21 229:2 245:21 249:9 260:10 262:23</p> <p><b>FTP</b> 219:7</p> <p><b>full</b> 22:24 26:16 27:4 53:8 72:14 127:3 151:18 157:7 169:14 183:9 188:23 189:1 194:19 196:25 199:13 200:21 220:18 227:16</p> <p><b>fully</b> 8:11</p> <p><b>function</b> 53:17 57:2 75:8</p> <p><b>functionality</b> 55:24</p> <p><b>functions</b> 59:13,14,17</p> <p><b>funded</b> 138:13</p> <p><b>future</b> 115:2 140:8 238:13</p> <hr/> <p><b>G</b></p> <hr/> <p><b>gave</b> 264:5</p> <p><b>general</b> 43:18 46:16 51:5 63:16 90:18 101:10 104:14 129:3 189:21 190:10 198:11 200:6 201:1 230:11</p> <p><b>General's</b> 197:18 203:7</p>	<p><b>generate</b> 42:24 55:25 72:11 82:10,22 90:14 96:7 100:7 247:11</p> <p><b>generated</b> 42:23 57:8 80:3 88:2 90:12 98:13 108:14 173:18, 20,23,24 174:2, 5,25 175:4,18, 21,23 184:25 185:3 246:15,19, 23 247:6 252:15</p> <p><b>gist</b> 129:3</p> <p><b>give</b> 26:7 37:1 42:5 44:11 60:5 63:6 75:17 110:4 154:14 184:1 221:17 224:9 253:16 256:10</p> <p><b>giving</b> 9:25 83:23</p> <p><b>glare</b> 233:9</p> <p><b>good</b> 6:6,10 112:15 131:12 187:19 204:1</p> <p><b>Government</b> 112:25 146:5 151:9 186:12 187:11</p> <p><b>grand</b> 250:9,11, 12</p> <p><b>great</b> 6:14 24:17 51:22 71:10 75:4 166:10</p> <p><b>ground</b> 8:9</p> <p><b>group</b> 57:8 126:7 127:19,21 128:1,18 129:5, 7,10,14,17,18,20 130:2,3,4 132:21,24,25 133:7,8,13,19, 20,21 134:6,14, 16,17 135:10,15, 24 136:1,2,9,12, 16,25 137:19 139:1,2,7,12</p>	<p>140:17 145:9 165:10 243:3,5, 7,10,12,13,17, 21,23</p> <p><b>groups</b> 131:3 133:25 134:9,12 138:14 139:5 146:8 161:22</p> <p><b>guarantee</b> 177:20 184:10 205:14</p> <p><b>guess</b> 71:15 100:19 105:20 176:21 204:10</p> <p><b>guidance</b> 66:12 127:19</p> <p><b>Guide</b> 130:6</p> <hr/> <p><b>H</b></p> <hr/> <p><b>H-E-R-S-H</b> 144:21</p> <p><b>half</b> 11:15 159:19</p> <p><b>hand</b> 27:6 104:5</p> <p><b>handed</b> 36:24 46:11 68:8 114:4 133:14 152:25 214:21 223:22 248:20</p> <p><b>handle</b> 23:10</p> <p><b>handled</b> 23:9</p> <p><b>handles</b> 21:15, 22</p> <p><b>handling</b> 25:17</p> <p><b>handwriting</b> 108:3 229:16 236:18</p> <p><b>handwritten</b> 69:7</p> <p><b>happen</b> 123:13 140:8</p> <p><b>happened</b> 43:13 167:16 173:17 179:25</p>	<p>181:18,20 184:22 187:4 206:6 214:4 218:11</p> <p><b>happy</b> 192:20,21 196:4,20</p> <p><b>hard</b> 46:9 80:19 104:1 152:22 166:12 233:8 246:11 250:14</p> <p><b>Harrisburg</b> 159:11,13</p> <p><b>Harry</b> 229:23</p> <p><b>head</b> 8:19 71:12</p> <p><b>header</b> 35:23 45:4 54:9 87:10 102:17 198:25</p> <p><b>headers</b> 250:21</p> <p><b>heading</b> 89:20 93:24 94:14</p> <p><b>headings</b> 89:11</p> <p><b>Health</b> 89:21 180:17</p> <p><b>hear</b> 6:9,12 8:25 99:8 170:3 213:23 244:3</p> <p><b>heard</b> 9:6 144:20 233:22</p> <p><b>hearing</b> 113:1, 24 151:10 156:20 157:2,8 187:12</p> <p><b>hearings</b> 6:16</p> <p><b>heat</b> 208:25</p> <p><b>held</b> 18:19</p> <p><b>helpful</b> 46:3 62:12 154:1 225:24 226:8</p> <p><b>helps</b> 75:12 221:18 249:2</p> <p><b>Hersh</b> 144:21</p> <p><b>high</b> 122:3 172:8 234:23</p>	<p><b>high-level</b> 126:4,12 173:20 177:21</p> <p><b>highlighted</b> 39:7 45:16,21 46:7,15</p> <p><b>highlighting</b> 45:21 46:2,8,19</p> <p><b>hires</b> 196:9,10</p> <p><b>history</b> 52:17 53:4,6 62:17,19 81:1,20,23 82:7 92:2 105:3,5,13 106:15 122:5 125:1,15 126:4 163:4 263:4</p> <p><b>hm-mm</b> 8:19</p> <p><b>holding</b> 203:22</p> <p><b>Homeland</b> 226:12</p> <p><b>hour</b> 11:15 138:1 159:19,21</p> <p><b>hours</b> 119:21 159:20 189:25 257:17 259:14 260:3 263:24</p> <p><b>House</b> 112:25 146:4</p> <p><b>hundred</b> 122:11 174:12 176:24, 25 177:25 178:3, 9,16 205:14 212:12 219:23 221:25</p> <p><b>hundreds</b> 260:6</p> <p><b>hypothetical</b> 140:7 195:19</p> <hr/> <p><b>I</b></p> <hr/> <p><b>ID</b> 248:13 250:22</p> <p><b>idea</b> 186:20 232:24</p> <p><b>identification</b> 14:19 24:16 28:22 36:2 44:22</p>
---	---	--	---	--



50:17 54:5 66:15 73:18 79:17 85:14 112:11 132:4 151:5 157:6 169:7 188:1 197:21 209:3,16 222:19 226:23 229:8 232:6 236:1 237:13 242:6 246:9	<b>important</b> 134:3 <b>improve</b> 154:17, 21,22 156:2 <b>improvement</b> 116:5 155:16 <b>improvements</b> 114:25 <b>improving</b> 154:18,20 <b>inaccurate</b> 182:3 228:16 <b>inactive</b> 72:25 88:23 235:4,15, 17 <b>inadvertent</b> 116:10,16,25 117:8 130:14,18, 24 131:6 145:19 146:1,9 162:22 <b>inadvertently</b> 115:5,17 116:6 117:4,14 137:8 145:23 163:17 <b>inappropriate</b> 195:13 201:9 264:1 <b>include</b> 32:11 39:19 40:6,11 91:19 103:3 110:12 116:12 125:18 133:24 134:5 138:15 240:21,25 <b>included</b> 120:10 122:2 143:23 148:18 230:10 240:16,23 241:2 244:12 <b>includes</b> 20:19 41:7 127:19 128:23 129:1 <b>including</b> 13:15 52:17 99:10 146:8 155:24 166:24 208:13 223:11 224:1 228:7 239:22	<b>inclusion</b> 82:12 <b>inclusive</b> 208:4 <b>incorrectly</b> 102:11 <b>indicating</b> 80:12 82:8 109:17 117:3 123:18 125:12 160:10 161:19 163:11 <b>indication</b> 80:17 103:23 <b>indicative</b> 60:25 178:5,7,8,11 <b>indicator</b> 120:25 121:3 171:4 172:13 175:15 176:10 177:4,10,22 178:19 184:15, 19 222:5 <b>indicators</b> 169:23 170:11 172:17 221:13 222:3,9 <b>indirectly</b> 23:25 <b>individual</b> 50:8 60:13 64:12 95:15 96:10 106:23 117:25 126:5 162:13,14 228:14 254:22 <b>individual's</b> 244:15 <b>individuals</b> 125:6 128:14 133:19 134:10 137:8 139:2 140:24 141:9,25 142:11,20 144:25 145:9,11, 12,14,16,23 146:1 147:2,8,12 148:7 160:23 162:24 177:19 190:22 204:4 210:15 214:9 215:10 220:24 221:10 229:25	238:17 240:15, 17,22,24 241:5 255:4 256:25 <b>individuals'</b> 244:11 <b>ineligible</b> 113:17 114:1,13 119:17 120:4,11 <b>influence</b> 9:16 <b>inform</b> 114:22 115:3 <b>informal</b> 129:10 130:4 133:12,21 134:19 135:10 139:1,5 140:17 <b>information</b> 12:25 16:22 22:8,16,22,25 23:4,5,8,10,18 41:24 42:11 43:11 53:8 62:15 73:3 82:24 88:5, 12 93:16,19 97:15 98:23 99:11 101:19 104:25 106:2,3 107:9 109:12,15, 22 110:12,17 111:5 116:14 117:6 119:21 123:1,18 125:6 128:11 130:20, 22 141:15 142:15 143:11, 22 144:3 145:6 146:6 147:2 149:25 156:15 161:19 163:10, 19 172:23 174:5 179:10,20 183:21 185:10 189:11 190:23 200:6 201:15,19, 21 207:13 208:22 211:16 218:9 220:17,24 221:2,8 223:12, 16,19 224:2,5 226:18 227:10, 18 228:8,20 230:20 240:9	241:1,3 242:2 244:13,14,19 245:1,4,9 249:4 253:21,22 254:4 256:21,23 260:5 <b>informative</b> 223:20 224:6 240:9 <b>informed</b> 130:7 137:2 <b>infrastructure</b> 50:12 <b>infrequent</b> 230:24 <b>initial</b> 18:1 110:15,20 113:9 121:15 169:21 170:10 171:6,16 177:24 190:21 204:3 210:14 227:12 <b>initially</b> 118:3 134:7 220:6 <b>input</b> 97:5 <b>INS</b> 169:23 170:11 171:4 172:13,17 175:15 176:10 177:4,10,22 178:19 184:14, 19 221:12 222:3, 4,9 <b>inside</b> 149:11 208:25 248:16 <b>Inspect</b> 24:9 <b>inspection</b> 36:14 <b>instance</b> 96:1 248:10 <b>instances</b> 95:22 <b>instant</b> 55:2 <b>instruct</b> 189:10 202:20 204:23 <b>instructed</b> 167:20 211:14 216:20
--	--	--	--	--

<b>instructing</b> 186:24	191:14 194:1 196:25 202:22 206:16 218:13 219:11 220:15 221:23 239:9 240:2 256:19	<b>Jonathan</b> 6:2 29:2 113:3 253:6	197:7,15 206:18 209:8,17 213:6 215:5 222:15 223:21,23 224:18 228:22 229:3 233:14 242:24 244:3 245:13,24 246:1 248:6,22 249:2 251:5 252:11 257:20 260:4 263:12 264:4,24	<b>leanings</b> 138:16
<b>Integrity</b> 188:6 194:14 202:25 210:13		<b>July</b> 158:3,7 159:3,5 219:6 227:2,3 242:23		<b>learn</b> 65:10
<b>intend</b> 162:24		<b>jumped</b> 118:24		<b>learned</b> 158:11
<b>intended</b> 264:20	<b>investigations</b> 195:21 234:10, 11	<b>June</b> 208:10 215:24 240:4		<b>leaves</b> 217:19
<b>intense</b> 140:23 141:1 146:19 147:5,17	<b>involve</b> 41:23	<b>jurisdictions</b> 37:18,20		<b>led</b> 115:17 137:7 145:23
<b>intensely</b> 141:4	<b>involved</b> 22:2,4 120:17 134:16	<b>jury</b> 229:17 230:1,3		<b>leeway</b> 44:11 62:3 263:24 264:5
<b>intent</b> 163:9	<b>involves</b> 41:24		<b>key</b> 127:20	<b>left</b> 80:2 138:19
<b>interchangeabl y</b> 75:14	<b>involving</b> 193:14	<b>K</b>	<b>kind</b> 6:22 22:6, 12 103:21 109:24 110:14 225:24 262:7	<b>leftist</b> 138:13,18
<b>interest</b> 6:7 11:25 24:8 29:10 67:2 79:23 86:2, 15 134:1 139:17 234:24	<b>irregularity</b> 244:25	<b>Kansas</b> 226:15	<b>knowing</b> 152:19 250:19	<b>leftist-type</b> 138:13
<b>interested</b> 128:4,13	<b>issue</b> 65:10 114:20 115:4,19, 25 118:6 119:9 130:2,9,11,12 137:17 139:4 142:6 154:7 158:9 161:20 162:4 163:21 165:1,8 236:25 244:24 254:10 263:21	<b>Kathryn</b> 132:14 135:22 144:24 237:16	<b>knowledge</b> 10:6 18:9 90:22 94:16,19 123:6 227:17 248:2	<b>Legacy</b> 44:4 122:13
<b>interests</b> 162:16	<b>issued</b> 142:7	<b>Kathy</b> 11:25 144:23 223:1 238:4	<b>L</b>	<b>legal</b> 6:7 11:25 20:1 24:8 27:2, 13,23 29:10 30:16 31:7 32:4 33:4,13 37:16 38:3,15,21 39:14 40:2,13 41:18 47:3 63:9 67:2 79:23 86:2,15 139:17 191:24 192:4 193:4,9,19 195:18 241:8,17, 22 261:4,5,16 262:12,18 263:8, 10,11 264:1,17
<b>internally</b> 155:18 168:2 224:15	<b>issues</b> 134:3 139:7 140:9 154:3 192:24 207:3 236:19 237:7	<b>keeping</b> 135:14, 25 146:13	<b>labels</b> 247:25 248:12 251:11	<b>legally</b> 223:9 239:21
<b>interrogatories</b> 12:9 227:2,23	<b>item</b> 75:23	<b>Kerns</b> 6:5,6,10 10:23 11:2 13:24 14:4,9,12,16 15:17,19 24:17, 22 25:2,9 26:17 29:4 30:19 32:16,18 34:19, 22 35:24 36:23 45:6,20 51:15,18 54:1,6 56:6,16, 24 61:16,21 62:5 74:2 75:4 83:15, 25 84:24 85:3,5 87:6 91:24 112:7,12 114:7 115:10 131:10, 15,19,23 132:5 133:14,16 143:9 144:4 153:21 157:7,13 167:21 168:7 187:21 188:2 190:16 191:9,18,22 192:20 193:8,15 195:23 196:8,24	<b>lack</b> 219:19	<b>Legislation</b> 10:13 19:2,22 20:2
<b>interrogatory</b> 227:7,8,20	<b>J</b>		<b>language</b> 26:16 203:5	<b>letter</b> 24:13 25:13,17,19,24 26:1,2,8,22,23, 25 27:7,8 29:2, 10,12,17,19,20 30:5,14,17,20,23 31:2,10,23 32:3, 9 34:20,21 35:2 85:22 86:1,3,14, 21,22 92:15,18 93:15 108:4,8, 11,13,15,17,18 142:10,19 145:1,
<b>interrupting</b> 248:19			<b>languages</b> 169:3	
<b>intervening</b> 212:14			<b>larger</b> 26:11	
<b>interviewed</b> 131:7			<b>law</b> 22:17 40:8 42:13 47:7,8 168:6 172:1 235:24 238:19 241:4,19 242:3	
<b>introduce</b> 35:18	<b>January</b> 81:6 83:5,22 84:6 232:16 262:13		<b>laws</b> 40:15 238:16,25	
<b>introduced</b> 8:16	<b>job</b> 18:16 20:9, 10 21:10 41:1,5 66:12 70:11,15 126:20		<b>lead</b> 44:13 61:20	
<b>investigate</b> 95:5,7 244:23	<b>join</b> 133:20		<b>League</b> 128:23 133:11 138:21, 23	
<b>investigated</b> 234:2,6			<b>leaning</b> 138:19	
<b>investigation</b> 167:18 189:13				

18 167:6 168:11 208:11 209:25 210:7,9,14,24 211:4 212:9,11, 24 213:1,11 215:11,24 217:25 229:17, 21,22 230:5,19 231:19 236:13, 17,18 238:10 239:4 240:4,15 249:6 259:23 260:25 261:9,10 262:10 263:9 264:16,19	<b>limiting</b> 127:8, 10 <b>Linda</b> 6:6 <b>link</b> 157:7 <b>Lisa</b> 238:4 <b>list</b> 15:10 16:5 26:19 28:17 40:7,9,16,19,20 41:21 42:13,20 43:8 55:16,17, 18,22 57:3,9 63:13 73:14 78:19,22,25 80:19 81:3,5,7, 11,15 82:22 87:22 91:17 93:5 98:7 102:18,25 128:2 129:2 133:3 138:7 140:23 141:24, 25 142:23,25 143:3 148:6,9 149:11,18,20 150:3,10,17 151:20 152:6,11 153:3,7 154:19 174:2,4,25 175:4 182:21 184:25 185:2 190:22 191:4 204:3,7,8, 9,14,22 205:2,5 211:6 219:9 223:10 224:3 225:25 230:9 236:18 238:8,9, 17,23 239:20,23 240:5,8 246:14, 18,22 252:1 253:24 254:17 255:9,10 256:15	<b>litigation</b> 146:12,15,16,25 147:1 197:2 <b>live-person</b> 6:17 <b>lived</b> 233:22 <b>loaded</b> 219:6 <b>lobbying</b> 20:16 <b>local</b> 161:21 211:11 <b>log</b> 59:12,14 62:21,25 106:1 109:16 238:11 <b>long</b> 18:19 19:3, 12 131:16 137:24 150:5 158:25 159:16, 19 233:23 243:16 <b>longer</b> 129:21 159:17 <b>looked</b> 77:20 92:13,21 96:3 117:16 118:16 156:19 166:5 182:12 260:14 263:17 <b>lot</b> 6:17,25 10:3 61:23 138:12,19 197:10 234:24 251:4 252:20 261:7 263:3 <b>lunch</b> 112:8,13 132:23 <b>luncheon</b> 131:25	16 133:23 136:17 183:20 194:7 241:12 258:21 259:2 <b>magazine</b> 232:15 <b>magnified</b> 6:22 <b>mail</b> 57:12 135:24 142:19 240:18 <b>mailed</b> 84:17 207:23 208:6,9 210:15 213:10, 11 239:4 <b>mailing</b> 39:21 42:2 103:2 205:19 225:12 <b>maintain</b> 36:13 47:12,17 48:4,6, 10,11 49:7 52:15 59:18 135:19 136:4 149:11 231:20 <b>maintained</b> 49:1,8 55:4,12 62:16 106:22 119:12 122:13 135:20 136:10 177:17 231:24 262:11 <b>maintaining</b> 41:15 47:21 53:1 65:9 66:1,3 136:6,15 <b>maintenance</b> 28:17 40:7,17 41:22 42:13,20 43:8 55:16,17, 19,22 57:3,9 63:13 98:7 102:18,25 149:18,20 150:4, 11,17 151:21 152:6,12 153:3,7 154:19 205:2 223:9,11,13 224:3 225:25 239:20,23 240:8 258:12	<b>majority</b> 10:5 163:14 <b>make</b> 10:8 15:25 26:11 30:19 31:21 36:14 38:18 42:17 56:21 58:10 59:21 60:2,12 65:18,24 66:5 70:22 71:2 72:11 73:6 79:10 95:15 98:25 105:23 123:21 126:19 138:8 146:13 194:17,24 195:1 207:1 227:23 235:22 245:9 248:24 <b>makes</b> 241:18 <b>making</b> 43:5 264:2 <b>management</b> 52:17 53:3 199:20 200:22, 23 <b>Manager</b> 236:14 <b>mandated</b> 154:19 <b>marathon</b> 9:9 112:18 <b>mark</b> 35:25 157:4 197:16 222:16 236:14, 16 245:17 246:3 <b>marked</b> 14:18 24:15 25:5 28:21 29:1,8 31:10 36:1 44:21 50:16 51:20 54:4 66:14 68:9 73:17 75:2 79:16 85:13 112:10 114:4 132:3 151:4 157:5 169:6 187:25 197:20 203:2 209:2,16 222:18 226:22 229:7 235:25 237:12 242:5 246:8
<b>letterhead</b> 108:1 <b>letters</b> 57:18,21, 23,24 58:1,7 86:20,23 93:3 147:7,12,19,21 162:12 205:19 206:9,13,24 207:24 208:7,9, 13,18 210:15 213:16,18 214:4, 5,11,16,25 220:5,19 224:21, 22 225:14 230:23 231:11, 14,17 232:3 240:17 255:1 <b>level</b> 59:18 70:19,21 96:15 122:3 172:8 221:14 <b>license</b> 167:12 168:3,4 169:22, 25 170:11,13 177:6,8 178:18 179:3,15,22,23 180:3,4,10,14, 17,21 184:5 222:4 238:24 255:23,25 <b>licenses</b> 158:16 <b>life</b> 232:11 233:22 <b>lights</b> 233:9 <b>limited</b> 124:16	<b>listed</b> 52:8 227:25 <b>Listing</b> 76:18,22 77:11,13 79:19 <b>lists</b> 36:18 39:5, 12,25 40:11,17 90:11 154:18 <b>literally</b> 172:8 <b>litigate</b> 146:20	<b>M</b> <b>made</b> 13:11 22:16 23:1 31:9, 16,25 35:8 62:21,25 63:3 64:9 65:5,15 102:10 109:13 115:20,22,24 116:14,22 123:9,		

<b>marking</b> 54:14 56:23 85:25 229:5	8,9 179:2,4 220:6	13,14,17,18,20, 21,22,25 161:4, 10,11,17 162:9 163:19 164:5,6, 10,24 165:4,13, 16,24 166:1 170:5 171:15 174:14 185:16 255:1	23 182:3 185:7,9	138:6
<b>Marks</b> 6:2,7 7:24 11:24 13:2 14:23 18:16 24:12 25:5,12 29:3,7 31:21 33:8 34:24 35:14,21 40:23 45:2 50:24,25 51:7 54:8 56:13 57:1 62:8 66:19, 20 67:7 73:23 74:24 79:19 85:19 87:15 113:3 118:22 119:15 133:14 143:25 144:7,16, 20 147:16 157:19 158:23 170:3 194:7 195:2,16 197:12, 22,25 198:1 200:21 202:4,19 203:21 204:21 205:1 206:11 207:15 208:24 209:5,22 226:6 232:20 241:18 246:10 249:12 251:18 253:6 257:21 259:18 260:9 263:19 264:8 265:1	<b>matches</b> 175:1, 6,11,15 176:9, 12,14 178:17 182:9,12,16 219:24	<b>meetings</b> 134:18 135:3,5 136:20 139:20 158:6 159:3,5,7, 8,14,16 170:9 171:11,12 253:9, 13	<b>millions</b> 183:10 <b>mind</b> 24:22,23 83:23 122:7 <b>mine</b> 249:10 <b>minimum</b> 54:23 184:2 <b>minute</b> 85:4 <b>minutes</b> 96:3 134:23 209:11 257:16 <b>mischaracteriz es</b> 147:24 175:3 176:1 178:2 191:5 241:14 <b>mischaracterizi ng</b> 177:15 181:2 194:21 208:16 <b>missing</b> 235:4 <b>mission</b> 129:23, 24 155:1,2 <b>misunderstandi ng</b> 116:17,19 162:3 163:12 <b>misunderstood</b> 48:1 <b>modernization</b> 151:21 152:4,12 153:3,8 155:15 <b>modify</b> 167:8 168:19 <b>moment</b> 29:19 51:17 <b>Monday</b> 242:23 <b>monitor</b> 42:19 43:18 65:23 <b>monitoring</b> 43:7 <b>Montgomery</b> 97:17 <b>month</b> 208:11 <b>months</b> 113:23, 24 114:14 125:4	<b>morning</b> 6:6,10 9:15 11:14 18:11 242:1 245:20 246:25 247:1,3 254:25 260:21 <b>Moser</b> 173:12 174:17 178:15 180:22 181:4,17, 23 182:3 185:8,9 <b>Motion</b> 207:3 <b>motor</b> 116:4 123:17 130:5 137:6,17 141:7 142:23 145:22 148:18 150:2 151:10 167:8 168:19 169:2 177:3,4,18,22 181:12 238:24 259:10 <b>move</b> 28:20 33:6 35:5 36:7 67:5 73:6 85:16 86:18 89:3,16 100:3 102:15 112:4 131:11 151:17 169:9 198:18 237:9 <b>moved</b> 139:21 <b>moving</b> 247:22 <b>multipage</b> 74:1 <b>multiple</b> 146:8 <b>multitude</b> 152:3 <b>Murren</b> 257:25 259:4 <b>MVRA</b> 263:10
<b>mass</b> 39:21	<b>material</b> 194:16	<b>meets</b> 41:11		
<b>match</b> 169:22 170:10,25 171:1, 6,12,16 172:9,25 173:3,15,18,20, 25 174:8,19,22 176:5,7,20 177:10,21,24 178:9,23 179:8,9 180:23,24 181:5, 6,7,9,11,17,24 182:1,4,5 183:15,25 184:3, 6,8,12,18 185:23 186:5,19 204:11 221:7	<b>math</b> 235:13 254:11 <b>matter</b> 102:8 160:11 195:7,11 196:13,14,24 201:8,11 205:11 238:14 <b>matters</b> 16:21 140:9 201:24 203:16,20 <b>meaning</b> 37:5, 12 39:24 74:23 121:24 122:6 169:20 252:11 <b>means</b> 55:16 69:19 76:20 80:8,23 111:11 126:24 204:6 212:12 234:5,6 253:16 <b>meant</b> 58:4 138:18 149:23 <b>mechanics</b> 182:13,14 <b>mechanism</b> 212:24 <b>media</b> 234:21 <b>meet</b> 215:10 <b>meet all</b> 238:11 <b>meeting</b> 134:24, 25 135:6,7,12 137:20,21,24 138:4,9,10 139:11,13,15 159:17,18,20,22, 23,25 160:2,3,7,	<b>memory</b> 34:11 <b>mentioned</b> 15:4 63:18 132:21 187:10 <b>mentioning</b> 18:11 <b>Menu</b> 74:17,21 75:6,8 80:11 <b>merged</b> 182:10 <b>met</b> 40:21 41:7 212:22 <b>method</b> 84:15 106:7,16 <b>methodology</b> 141:12 206:20 256:20 <b>middle</b> 184:7 199:9 <b>Mike</b> 173:12 174:17 178:15 180:22 181:4,17,		
<b>matched</b> 174:24 175:24 177:2,5,				
				<b>N</b>
				<b>N-U-M</b> 247:25 <b>NAACP</b> 138:21 <b>names</b> 81:14 177:7 179:4 230:9 240:23

<b>narrative</b> 258:9, 11	<b>non-u.s.</b> 262:15	156:3 175:16	64:8 65:3,13	203:9,15 204:15, 23 206:1,14
<b>narrow</b> 241:22	<b>notaries</b> 20:11, 19,20	176:8,12,21,22	66:7 67:23 69:24	207:18 208:15, 21 211:8,13
<b>National</b> 35:15 36:5 37:6,10,14, 25 38:12 39:19 42:1	<b>notation</b> 111:1,4	177:1,24 178:6, 7,8,12,24 180:20	70:14 71:21	214:17 215:1
<b>nationally- recognized</b> 149:17 223:10	<b>note</b> 10:24 11:3 12:23 15:2 16:18 44:10 47:2 61:8 69:7 114:5 143:5 147:14 155:21 168:3 176:17 189:3 200:14 203:9 214:20 220:7 224:13 225:21 229:14 239:7 249:3 262:17	184:17 185:3,12, 13,14 186:1,9, 10,13,17 187:11 194:12 197:13 209:7,8 239:16 241:1 249:8 256:1,10	75:21 78:9,24 79:6,7 81:10,17 82:4,14,17 83:7 90:15 91:14,21 92:5 93:12 94:9 101:14 102:1,23 103:6 105:2 106:13,20 107:13,20 108:12,22 109:20 110:1,6 111:3 114:5,16 115:9,13 116:20 117:1 119:19 120:8,13 121:9 122:23 123:15 124:6 126:10 129:15 130:19 131:1,8 135:16 136:3,13,22 137:1,11 138:17 139:8,21 140:2, 15 141:14 142:12,21 143:5, 12,21,22,23 144:10,18 145:2 146:21 147:9,13, 14,23,25 148:10, 22 150:14 152:8, 16 153:13 154:5 155:7,19,21 156:14 162:19 163:6,23 164:2, 7,13,19 165:20 167:14,17 168:4, 9 170:17 171:7, 14,17 173:2 174:1,3 175:2, 22,25 176:17 177:12 178:1,21 179:5,17,19 180:12 181:22 182:11 183:17 184:16 185:1,24 186:6 187:5 189:3,24 190:7 191:5 192:8 193:5,10,11 194:20 195:5,17 200:3,7,14,19,24 201:6,22 202:14	217:16 218:2 219:2,20 220:7, 20 222:6 224:7, 13 225:3,21 226:1,19 228:17 234:13 235:8 239:7,25 241:7, 21 244:2,5,20 245:6 247:14 253:11 257:9 258:24 259:12 261:3,14 262:2, 17 263:2 264:17
<b>nature</b> 114:20	<b>noted</b> 140:13 143:12 240:3 255:11 264:21	<b>numbered</b> 26:19	<b>objections</b> 10:25 15:3 44:13 61:15 62:1 140:6,12 143:24 144:15 153:18 154:13 155:9 263:14	<b>obligation</b> 41:21 244:17
<b>NC</b> 78:17	<b>notes</b> 13:2 138:2 159:14,22,23,25 160:1	<b>numbers</b> 93:21, 23 99:5 100:10, 12,23 101:13,25 103:3 126:12 169:22,25 170:11,13 179:15 180:3,4, 21 250:22	<b>obtain</b> 41:25 117:5	<b>obtained</b> 123:18 223:12 224:2 228:8 255:2
<b>nearing</b> 257:17	<b>notice</b> 10:25 15:4 39:20 42:2 61:14,19,25 84:9 140:5,12 144:15 153:17,18 154:9 155:8,20 235:13	<b>NVRA</b> 35:15 38:19 42:12 192:19 235:23	<b>obvious</b> 180:15	<b>occasion</b> 60:11
<b>necessarily</b> 56:17 78:1 97:16,17 105:22	<b>noticed</b> 6:21	<b>oath</b> 8:10	<b>occasions</b> 60:2, 8 102:8	<b>occurrences</b> 150:12 223:9 235:17 239:21,24 240:8
<b>needed</b> 64:1 71:18 123:19 130:8 141:25 206:12 208:20	<b>notices</b> 42:23 43:5,11,14 55:25	<b>object</b> 125:9 153:18 181:1 196:22 206:25 238:21 241:15, 16,24	<b>occur</b> 150:12 223:9 235:17 239:21,24 240:8	<b>occurred</b> 182:1 189:2 240:5
<b>nice</b> 265:1	<b>notification</b> 43:1 63:13 89:22	<b>objected</b> 207:7	<b>occurring</b> 158:12 173:15 183:23	<b>October</b> 19:4,13 24:9 26:24 27:10 34:20 113:1,11 125:2 259:24 264:16
<b>Nick</b> 237:21 238:15	<b>notified</b> 230:1	<b>objection</b> 12:7, 15,18,24 15:2 16:19 23:11 25:14,18 26:5 27:1,12,22 28:3, 7,12,18 29:13 30:8,15 31:6,12, 24 32:4 33:3,12, 24 34:9 35:9 37:15 38:2,14,20 39:13 40:1,12 41:3,17 44:9 47:2,22 48:21 50:2 52:10 53:24 57:4 59:3,15 60:1,20 61:8,12 62:11,23 63:8		
<b>night</b> 11:4 13:16 17:18,19 18:4,6, 10,13 245:18 250:24 252:23 260:7 264:6	<b>notify</b> 229:22,25			
<b>non-citizen</b> 64:19 96:7 103:1 156:11 172:15 227:11 230:15 256:9	<b>noting</b> 193:10			
<b>non-citizens</b> 82:3 93:10 103:4 113:1 115:16 116:10,11,13 117:13 130:15 154:4 158:15 163:21 167:25 178:12 186:10 256:16,19 257:7	<b>November</b> 80:24 88:8,25 230:11			
<b>non-partisan</b> 138:24	<b>Num</b> 248:13			
	<b>number</b> 23:14 52:16 68:10 83:24 87:23 88:10 91:3 94:2 99:13,16 101:3, 7,18,20 124:24 126:18 133:9			



<p><b>offered</b> 155:10</p> <p><b>office</b> 10:4 11:5, 7 16:12 17:3,8, 10,12,18 22:11, 13,14,19 23:3,6 37:5,12 38:10, 11,17 57:22 84:18 97:5 113:8 141:3 142:14 143:14,16 146:11 148:5 160:18,24 161:9, 21 166:17 186:23 187:3 188:19 189:8,14, 15,17,20,21 190:2,9 193:18 196:10 207:16 216:4,7,8,10,13, 16 230:1 231:22 249:5 250:23 252:22 253:10, 13 254:9,11,16 262:12</p> <p><b>officer</b> 22:10</p> <p><b>offices</b> 10:11 37:22,23 89:2 101:11 211:11, 16 213:22 214:2 216:22 217:15 218:10 221:24</p> <p><b>official</b> 36:18 39:4,11,25 40:9 47:13 48:11,15, 17 49:5 58:15 60:21,25 62:13 63:23 64:6,23 65:1 66:3 68:2,5 70:10,25 71:4 100:9 108:24 116:24 149:9,11, 13</p> <p><b>officials</b> 64:15 116:1,15,22 117:9,12,20 128:4 131:3 133:10,24 146:9 243:4</p> <p><b>ongoing</b> 155:2 156:1</p>	<p><b>open</b> 7:13 245:19</p> <p><b>opened</b> 11:10</p> <p><b>operation</b> 21:16</p> <p><b>operations</b> 20:15 21:22,25</p> <p><b>opinion</b> 226:11</p> <p><b>opposed</b> 17:14 22:13,19 180:20</p> <p><b>opposite</b> 204:10</p> <p><b>option</b> 7:15 82:10</p> <p><b>order</b> 59:19 142:17,19 259:9, 11,17,20</p> <p><b>organization</b> 150:24</p> <p><b>organizations</b> 133:11 138:12, 13,22</p> <p><b>original</b> 65:25 236:18</p> <p><b>originally</b> 50:22 74:6</p> <p><b>other's</b> 97:10</p> <p><b>outreach</b> 219:10</p> <p><b>oversee</b> 20:10 21:21</p> <p><b>overseeing</b> 20:14</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m.</b> 11:6 131:25 132:1 265:6</p> <p><b>Pa</b> 54:9</p> <p><b>Pacer</b> 103:24</p> <p><b>paelectiondirec tors@ yahoogroups. com</b> 242:20</p>	<p><b>paelectiondirec tors@ yahoogroups. com</b> 242:21</p> <p><b>pages</b> 11:11 74:3 112:5 197:10 252:1,20</p> <p><b>paginated</b> 232:17</p> <p><b>paging</b> 74:7</p> <p><b>paper</b> 27:8 30:20 36:24 46:13 56:3 61:6 83:16,18 84:17 91:22 109:6 190:15 211:19 213:4 215:6 223:22 248:20 249:9</p> <p><b>paragraph</b> 26:8, 16,18 27:3 28:2, 6,9,11,16 32:9, 22 46:15,20,23 47:1 61:19 113:14,22 118:11 120:20 127:3,14 140:22 149:15 150:19 151:18 157:8 169:15 199:10, 13,15 200:21 202:4,5 227:16 229:21 230:8 233:4,7,20 260:14,20 261:2, 22 262:9</p> <p><b>paragraphs</b> 27:17 262:24 263:18 264:15</p> <p><b>part</b> 23:21 36:5 39:6 47:17 49:11 51:1 52:4 57:2,6 75:6,10 113:19 124:23 156:1 157:11 173:23 176:19 183:15 189:20 190:5 205:2,10 208:17 213:12 219:16 232:21 234:1</p>	<p>238:23 246:22 247:22 249:13, 25 254:23 256:3, 6,18</p> <p><b>participants</b> 138:10</p> <p><b>participated</b> 6:15</p> <p><b>participating</b> 139:19</p> <p><b>parts</b> 48:19,22 50:6</p> <p><b>party</b> 255:22</p> <p><b>past</b> 11:5 96:3 135:1 172:16</p> <p><b>Pedro</b> 86:3,5,14 92:15 93:3 166:22</p> <p><b>pending</b> 9:12 32:24</p> <p><b>Penndot</b> 12:21 104:5 115:1,25 137:6,17 145:22 146:6 158:18 168:12,16,22 171:4 172:3,18 176:3 183:12,16 199:14 202:6 204:12 259:9</p> <p><b>Penndot's</b> 171:2,25 172:13 173:4 176:7 177:3,18 179:7 184:19 222:8</p> <p><b>Pennsylvania</b> 9:25 14:22 18:18 38:5 39:9,15,17 40:15 42:12 43:25 44:7,17 46:25 51:4 54:15 79:5 86:6 93:11 98:6 125:7 128:25 149:6,25 150:5 166:25 167:7 170:1,14 197:18 199:6 222:1 229:20,24 230:2 231:8 235:2 254:12</p>	<p>258:10</p> <p><b>Pennsylvania's</b> 22:17 40:8 47:7 235:24</p> <p><b>people</b> 23:9,23 24:1,4 40:24 41:2 83:4 94:13 138:15 163:4 165:7 167:24 178:8 201:11 208:12 209:25 210:25 212:17, 18 217:24 220:4 233:23 238:6 239:3,6 254:17</p> <p><b>percent</b> 122:11 174:12 178:9 184:10 205:13, 14 234:21</p> <p><b>percentages</b> 100:21</p> <p><b>perform</b> 52:16 57:3 181:5</p> <p><b>Performance</b> 197:18 198:10, 25 199:6</p> <p><b>performed</b> 170:16,20 171:6, 16 172:24 180:23 181:6,7 182:4 184:12 191:8 205:16 206:21 225:2 247:5</p> <p><b>performing</b> 66:6 225:25</p> <p><b>performs</b> 174:19,22</p> <p><b>period</b> 19:20 63:12,16 109:5 127:6 235:12</p> <p><b>periodically</b> 230:25 231:1</p> <p><b>Permit</b> 55:1</p> <p><b>person</b> 25:16 70:11,16 97:4 120:25 144:17 159:9 160:19</p>
--	--	--	--	--

161:3,6 172:15 176:6 177:20 181:9,13 184:23 233:25 <b>person's</b> 59:12, 14 70:5,10 121:11 172:14 <b>personal</b> 18:9 147:2 179:10 249:4 <b>personally</b> 10:17 12:2 13:8 16:14 23:8 37:9 156:7 <b>persons</b> 120:16 <b>Philadelphia</b> 80:1,4 82:2 84:12 91:16 92:8 96:4 97:4,5,16 117:23 118:1 119:7 128:24 156:5,11 159:12 160:16 161:4 165:1,5 232:15 234:11,23 237:21 238:5,6 239:4 254:6,15 255:13 256:16 257:3,10 <b>Philly</b> 233:5,21 <b>phone</b> 184:24 212:24 <b>photo</b> 36:15 <b>photocopy</b> 67:15 <b>phrase</b> 40:4 <b>physical</b> 134:25 135:3 <b>physically</b> 173:14 <b>pick</b> 184:23 <b>picture</b> 109:8 <b>piece</b> 122:6 <b>pile</b> 253:1 <b>PILF</b> 67:1 74:5 83:14,25 84:3	86:1 87:6,14 89:4,17 93:2,22, 23 197:15 229:5 <b>pivot</b> 248:4,15 249:13 250:13, 18,21 <b>place</b> 11:21 56:10 129:17,21 133:9 135:2 136:21 167:2 187:19 192:8,22 196:21 <b>places</b> 60:18 <b>Plaintiff's</b> 66:24 227:1 <b>plan</b> 151:21,25 152:2,4,5,10 153:4,8,25 155:1 <b>planned</b> 260:4 <b>planning</b> 260:8 <b>plans</b> 115:2 152:14 154:2 <b>play</b> 157:3 <b>Pleas</b> 231:9 <b>pleasant</b> 112:20 <b>point</b> 33:7 34:13 35:1 45:12 93:8, 11 110:9 113:19 125:12 139:14 146:18 158:18 162:2 167:11 172:10,12,15,21 174:9 178:16 186:7,17 188:22 190:20 192:21 204:2 205:25 208:3 222:12 235:22 241:6 257:13 <b>point-in-time</b> 120:22 221:7 <b>pointing</b> 163:1 <b>points</b> 180:24 182:21 183:24 205:18 208:5 <b>political</b> 138:16	199:21 200:2 202:8 <b>polls</b> 106:8,11, 17,19,24 <b>Portals</b> 52:5 <b>position</b> 11:22 18:19,21,25 19:3,9,12,18 20:8 21:6,12 23:22 94:22 95:20 115:15,17 192:14 193:15, 21,25 195:2 196:12 201:7 207:7 <b>possessing</b> 115:6 116:6 <b>possession</b> 27:19 166:12,13 204:14,22 260:6 261:25 <b>possibility</b> 116:5 <b>Post</b> 57:21 <b>Post-it</b> 229:14 <b>Postal</b> 57:25 <b>posted</b> 229:15 <b>potential</b> 115:19,25 116:13 117:13 118:5 126:6 130:14 141:9,25 146:24 175:14 176:9,12,14 186:10 205:12 220:22 226:3 244:24 256:19 <b>potentially</b> 99:16 176:6 244:22 260:16 261:12 <b>Powell</b> 85:23 86:2,14 <b>power</b> 58:9 65:18 <b>practices</b> 223:11	<b>practitioner</b> 106:6 <b>pre-date</b> 84:10 <b>preceded</b> 263:7 <b>preferable</b> 184:6 <b>prepare</b> 13:8 16:14 113:6 <b>prepared</b> 16:16 17:22 51:9 60:6 61:10 71:10 113:8 114:15 <b>prescribed</b> 40:7 <b>present</b> 173:14 175:8 <b>presented</b> 114:15 <b>preserve</b> 11:17 58:9 <b>preserves</b> 65:17 <b>preserving</b> 11:22 <b>press</b> 161:8 192:1 258:1,2,5 <b>pretty</b> 20:22 61:16 101:16 137:15 138:22 184:8 <b>previous</b> 69:15 78:8 105:12 126:13 132:22 200:13 202:23 208:2 212:8 <b>previously</b> 104:9 137:5 145:21 166:19, 20 210:18 225:7 <b>primarily</b> 117:23 134:20 <b>primary</b> 208:6 223:8 224:22 239:20 <b>print</b> 15:16 50:21 197:9	<b>printed</b> 97:23 103:21 259:25 <b>printing</b> 51:16 56:11 233:11,19 <b>printout</b> 248:21 250:14 <b>prior</b> 9:12,13 14:24,25 15:7 16:5 18:11,22 19:6,15,24,25 47:8 79:3,8 81:15 88:7 90:2, 8 91:13 113:24 114:14 122:10 125:4 132:16 138:4 158:24 208:6 247:1,2 258:17 <b>privacy</b> 238:16, 20 <b>privilege</b> 141:16 154:12 155:25 191:21 192:15 194:3 195:1,11 196:1,8,11,15 202:3,17 203:17 204:17 206:5 207:11 208:23 220:10 <b>privileged</b> 143:7 144:3 145:5,6 147:15 148:1,3,11,15, 23,24,25 167:18 179:20 186:25 189:5,12 191:7, 11,16,19 192:3 193:12 194:16 195:7,10 196:13 197:5 201:8,11, 24 202:1,2,3,21 205:8 206:3,15, 16 207:13,19 220:14,15 239:9 240:1 241:13 <b>privileges</b> 155:24 <b>probabilities</b> 100:22
--	---	---	---	---

<p><b>problem</b> 11:9 24:19,24 119:2 131:4 158:13,14 165:4</p> <p><b>procedurally</b> 182:7</p> <p><b>proceeded</b> 205:19</p> <p><b>proceedings</b> 6:22 25:1 85:12 187:24 209:14</p> <p><b>process</b> 51:16 52:15 56:10 113:20 114:21 127:18 130:1 153:6 154:11 155:23 167:9 168:19 173:23 178:14,15 183:23 219:16 230:3 259:10</p> <p><b>processed</b> 102:7 166:17</p> <p><b>processes</b> 154:22 156:2</p> <p><b>processing</b> 30:7</p> <p><b>produce</b> 25:23 30:13,24 31:22 136:12 155:11 253:24</p> <p><b>produced</b> 66:25 79:8,23 92:15 93:2 101:21 164:16,18,21 252:4,9,10,13 253:8,12,15 263:10</p> <p><b>product</b> 130:5 143:8,10 148:12, 24 189:5,13 191:7,16 192:3 202:3 204:18</p> <p><b>products</b> 152:3, 11</p> <p><b>professor</b> 199:21 200:2,9 201:5 202:7,8</p>	<p><b>program</b> 39:19 42:1 89:12 120:24 121:8 149:24 182:8 183:6 223:13 224:3 228:13 239:23 240:8</p> <p><b>programming</b> 137:6,10,13 145:21 146:5</p> <p><b>programs</b> 36:17 39:3,10,16 40:4, 17 42:13,15,18, 25 55:19 149:17 150:10</p> <p><b>progressed</b> 134:10,12</p> <p><b>prohibit</b> 9:17</p> <p><b>prohibition</b> 111:16</p> <p><b>prohibits</b> 235:2</p> <p><b>projects</b> 21:24</p> <p><b>prominently</b> 168:20</p> <p><b>pronounce</b> 80:19</p> <p><b>properly</b> 94:10</p> <p><b>protect</b> 147:1 238:16 241:5</p> <p><b>protected</b> 31:14 141:15 154:11 168:5 171:25 179:21 183:19 192:15 196:1,4 197:5 202:16 203:16 204:16 206:4 208:22 220:9 238:23 239:9 241:13,19</p> <p><b>protecting</b> 238:19</p> <p><b>protocol</b> 109:1</p> <p><b>proven</b> 121:4</p> <p><b>provide</b> 17:25 23:3,4,7 42:10 53:8 76:14 82:24</p>	<p>90:25 99:1,11 118:18 126:15 127:3 182:14,22 183:20 201:18, 21 205:12 228:20 230:20 238:8 240:9 242:2</p> <p><b>provided</b> 17:22 23:17 33:15,19 34:2 75:23 76:2 93:14 100:7 102:19 133:22 142:23 143:2,3, 11 158:19 162:13,18 165:21 172:23 174:13 176:2 180:19 182:20, 21 183:11 185:11 191:3 216:20 218:9 225:6 227:2</p> <p><b>providing</b> 21:23 41:24 193:4,9</p> <p><b>provision</b> 37:6, 10,13 38:18</p> <p><b>provisions</b> 37:25 38:11</p> <p><b>public</b> 6:7 11:25 22:2,5,8,15 24:8 29:10 36:8,14 43:18 67:2 72:17 73:2 79:22 86:2, 15 113:1 139:17 151:10 194:8,19 195:3 258:21 259:2</p> <p><b>publicly</b> 22:22 23:1,16,19 88:5 133:18 141:22</p> <p><b>publish</b> 22:23</p> <p><b>published</b> 43:4 73:2 88:12,18 90:18</p> <p><b>publishes</b> 72:14</p> <p><b>publishing</b> 56:23</p>	<p><b>pull</b> 14:2 112:8 157:9 187:17 222:15 228:23 232:8 242:8 247:19,20</p> <p><b>pulled</b> 88:14,18 183:12</p> <p><b>pulling</b> 157:11 229:4 250:2</p> <p><b>purchase</b> 259:9, 11,17,20</p> <p><b>purpose</b> 36:17 39:3,10 40:5,14, 17 55:13 59:17 69:25 178:23 227:19</p> <p><b>purposes</b> 52:25</p> <p><b>Pursuant</b> 26:18</p> <p><b>pursue</b> 123:21</p> <p><b>purview</b> 38:8</p> <p><b>put</b> 15:15,16 24:11 28:23 44:25 54:3 56:2, 8 66:17 73:20 79:13 84:25 85:6 112:5 115:15,16 132:7 140:10 148:9 169:11 186:12 188:2 191:10 197:11 209:20 210:17 213:8 236:7 246:1 247:24 249:9 254:16</p> <p><b>putting</b> 56:22 193:11</p> <hr/> <p><b>Q</b></p> <hr/> <p><b>qualification</b> 230:3</p> <p><b>qualifications</b> 41:11 58:11 65:19 115:6 116:7 123:20 141:10 145:10 148:8 195:15 212:22</p>	<p><b>qualified</b> 40:21 89:13 163:13 212:21</p> <p><b>quarters</b> 158:14</p> <p><b>queried</b> 124:18, 20,25</p> <p><b>queries</b> 175:19</p> <p><b>query</b> 100:6 101:2,21 102:4,5 124:2,4,5,15,23 125:17 126:8 247:5,9,11,17 249:17,18 251:18,20</p> <p><b>querying</b> 247:18</p> <p><b>question</b> 8:24 9:5,6,12 16:3 27:17 28:9,16 30:23 32:24 33:1,17,21 49:11,22 56:18 64:5,11 71:19,20 73:14 90:7 111:19 114:9,10 115:7 140:14,18 143:14 153:19 154:14 155:22 168:20 176:18 186:15 193:23 195:12 200:17, 20 202:21 203:10 205:8,23 206:6,7 220:13 224:14 226:5,6 233:20 234:20 241:16,24 251:1 261:21,22 263:7, 19 264:9</p> <p><b>questioning</b> 61:20,23 201:8</p> <p><b>questions</b> 8:11 9:17 10:3,6 13:5 61:12 112:19 140:7 179:5 181:2 191:7 192:7,23 193:13 194:5 195:10,19 196:7,23 197:4 200:19 201:13</p>
---	--	--	---	--



204:24 207:4,5,8 220:8 263:11,23, 25 <b>quick</b> 24:22,23 <b>quote</b> 39:2 170:9 236:19	70:4,5,8,12,23 71:2,8 72:8,22 75:23 76:1,3 77:16 78:12 79:2 80:14 81:12,22 82:7,11,23 91:18 94:3,5,12,24 95:2 102:13 106:11 117:18 123:4,12 125:14 180:13,15 240:11 249:10 252:2 262:15	<b>receives</b> 62:15 63:13 231:18 <b>receiving</b> 216:2 <b>recently</b> 32:11 159:1 239:3 <b>recess</b> 24:25 85:11 131:25 187:23 209:13 <b>recipients</b> 132:20 210:6,8 211:10 <b>recollection</b> 31:1 34:7 134:11 159:18,20 160:12 161:18 165:6 171:8 231:2 <b>reconfigure</b> 259:10 <b>record</b> 8:8,17,21 10:24 11:13 24:18 25:3 34:20 48:15 49:25 50:1,4 56:7 59:4, 25 60:13,17 62:20,24 63:1, 10,15 64:1,2,11 65:16,21 66:23 67:16,22 68:2,7, 20,24 69:15 70:2,3,6 71:2 75:1 81:2,20 82:25 84:15 91:22 92:2 94:6 105:4,8 106:10, 15,22 109:13 123:11,18 135:15 136:6 153:15 157:12, 16 171:5 175:24 176:11 177:4,6, 8,9,22 179:22,24 180:10,11 183:2 184:20 191:10 192:8 193:11 209:11 214:20 231:23 235:16 254:22 255:25 257:12 263:6 264:2	<b>recorded</b> 63:18 69:23 81:2,21,23 92:2 105:8 106:15,17 108:19 119:22 125:15 <b>records</b> 11:19 12:12,17,20 13:12,14,15 18:1 22:3,5 24:9 25:24 26:3,24 27:10,19 28:1,6, 10,15 30:12,14, 24 31:4,10,22 32:2,12 33:1,17, 19,22 34:14,25 35:3 36:16,20 38:7 47:13 48:4, 12 49:1,8,12,18 50:7,10,11 52:15 55:3,12 59:21 64:17 65:10,25 66:3 67:2,25 72:25 74:3 76:16 79:1,22 81:12 82:3,6 84:10 89:6,19 91:17 92:1 93:9 94:1,2 95:13,15,17,18 96:19 97:11,12 100:9,12,15,25 102:6 104:23 108:24 109:2,6 117:17 118:17, 20,25 119:2,12, 23,25 120:6,18 121:15,16 122:16,18 123:3, 22 124:1,14 125:1,13,15 126:15,16,21 127:1,8 134:17, 21,22 135:18,25 136:4,7,8 141:7, 8 142:24,25 145:17 148:18, 19,20 149:3,7,13 166:5,11,12 167:13,23,24 168:3,5,8 169:24 170:12 171:1,2, 4,25 172:9,18,20 173:21 174:6,7, 15,24 175:9	176:3 177:1,3, 17,19 178:3,6,24 180:1,2,4 182:16 183:8,10,19 184:13,17 185:18 186:20 205:13 212:7,15 214:14 217:20 218:8,21,25 220:25 225:13, 14 230:10 231:24 232:1,3 238:24 244:11, 12 246:18 247:6, 23 248:25 250:13 252:2 254:12 255:2,5, 13 257:4,7,11 260:25 262:11 264:5,22 <b>redactions</b> 249:4 <b>refer</b> 13:19 50:19 54:2 55:7 122:16 125:24 167:3 189:14 259:22 <b>reference</b> 240:7 <b>referenced</b> 24:3 166:23 167:6 195:22 200:13 248:23 <b>references</b> 224:25 <b>referencing</b> 152:20 203:6 <b>referred</b> 40:16 113:22 170:8 210:18 <b>referring</b> 10:11 13:4 22:7 26:17 32:14,22 39:1 57:14 87:4 152:2,9,23 153:25 167:1 168:13 171:1 189:15 194:9 201:2 228:7,16 234:9,17 235:10 236:23 238:18
<b>R</b>				
<b>race</b> 141:23 <b>raise</b> 118:5 <b>raised</b> 161:21 <b>raising</b> 161:25 <b>ran</b> 84:13 249:16 <b>rarely</b> 20:18 102:9 <b>raw</b> 248:17 250:19 <b>reach</b> 26:12 139:3 <b>reached</b> 118:4 158:3 206:23 <b>reaches</b> 128:20 <b>read</b> 15:12 29:20 36:12 38:25 40:3 45:8,10,16 46:2, 6 104:20 122:4 146:3 198:15 205:17 260:18 264:10 <b>reading</b> 27:3 114:17 146:2 251:10 <b>reads</b> 229:21 <b>ready</b> 7:12 <b>reality</b> 150:12 <b>realize</b> 76:4 102:10 163:14 234:7 <b>realized</b> 163:16 <b>reason</b> 10:18 63:20 64:19,20, 21,24 65:5 69:16,20,22,25	<b>reasonable</b> 36:15 <b>reasons</b> 63:6,17 76:5 89:10 100:2 180:21 <b>recall</b> 25:25 34:5 71:12 73:12 74:25 86:8 107:8 118:9 125:10 127:24 138:5 159:5 160:1,8,19 161:7,9,24 162:21 164:8,24 165:15 166:2,9 210:8 216:12 217:4,12 218:23 225:10 231:10 238:1 247:2 254:24 <b>receive</b> 25:13 29:11 206:13 211:3 217:25 230:23 231:7,14, 16 <b>received</b> 11:4 25:20 26:2,22,23 27:18 29:17 30:5,21 31:2 67:3 74:4,12 107:19 117:2 147:5,17 190:14 208:18 210:1 213:16 218:5 230:10,18 231:11 243:9 245:18 250:24 255:7 260:25 261:9,10,25 262:9,11			

239:1,11 240:12 242:22 250:8 <b>refers</b> 39:2 126:22 127:1 152:18 212:6 <b>reflect</b> 75:1 <b>refresh</b> 34:7,11 <b>regard</b> 21:10,20 32:10,21 39:23 41:14 43:8 63:5 76:3 123:22 144:23 145:12 186:4 222:3 225:15 226:18 240:7 262:23 <b>register</b> 20:21 36:20 40:22 84:18 97:3 110:20 115:17 117:14 158:17 162:24 163:13 <b>registered</b> 36:22 84:16,18 88:11 93:10 97:7 113:18 114:1,13 117:4 120:4 148:8 162:2 163:3,17,22 165:8,9,11 178:12 180:14, 16,18 184:14 186:11 212:22 218:22 221:11 225:18 234:22 235:11 239:4 255:22 262:12 <b>registering</b> 41:8,9 115:5 116:6 137:8 145:23 163:15 <b>registrant</b> 94:8 95:23 110:13 111:6 116:19 117:6 119:17 121:16 122:21 123:7,20 241:3 <b>registrants</b> 40:11 79:4 91:11 93:25 94:13 95:3,9 103:3	115:5 120:11 121:20 122:17, 19 124:22 126:7 165:17 205:20 206:12,23 207:25 208:1,2, 7,10 217:11 219:19 220:19 228:21 256:15 260:15 261:11 <b>registrar</b> 38:6,9 49:20 <b>registrar's</b> 41:20 97:5 <b>registrars</b> 38:13 58:2 66:2 149:10 <b>registration</b> 35:15 36:6,9,21 38:7 40:8 47:13 48:4,12 51:4 52:9,15,19 55:3, 11 58:21 59:1 60:17 61:1,3 63:6,7,10,19,22 64:7,17 65:20 69:9 79:1 86:23 87:10,13 88:11 93:15 98:1,7,8 100:1 113:16,20 114:12 116:25 117:9 120:3 121:17 123:17 127:19 130:1,6, 14,24 139:7,10 140:24 141:7 146:1 148:19,20 149:2,24 150:2 151:20 152:6,11 153:3,7 154:3 156:11 166:17 167:13,24 169:24 170:12 171:3 176:3 177:2,6,7,17 178:17 179:2,13, 16 180:4,10 182:15 183:2 188:5,23 190:23 194:13 195:16 197:1 199:1,10, 23 202:10,25 204:4,12 210:12	212:17,19 216:6, 18,22 217:15 223:12 224:2 226:14 227:10, 18 228:8 235:2, 24 244:11 255:22 261:13 <b>registrations</b> 58:14,18 64:14 71:7 78:22 87:21,24 88:7,23 91:3 116:10,11, 12,16 130:18 149:5 251:8 <b>registry</b> 12:21 19:11 21:13 43:22 47:11 48:9,16,17 49:5 58:15 60:21 62:13 149:9 199:7 <b>relate</b> 20:14 22:3 36:20 154:7 <b>related</b> 12:20 21:11,12,24,25 38:7 52:18 53:3 139:9 141:11 154:3 238:14 262:15 <b>relates</b> 77:19 130:9,11 <b>relationship</b> 207:9 <b>relatives</b> 262:13 <b>release</b> 192:1 238:17 <b>releasing</b> 56:11 <b>relevant</b> 110:3 153:20 154:8 155:9 <b>reliability</b> 122:11 <b>reliable</b> 120:25 121:2,6,11 220:23 221:2 225:17,23 226:13,16,18	<b>remain</b> 61:13,25 <b>remainder</b> 218:5 <b>remaining</b> 205:18 <b>remember</b> 17:4 225:19 233:24 240:19 247:4 260:20 <b>remind</b> 42:14 66:12 <b>reminders</b> 42:11 <b>reminding</b> 42:16 <b>removal</b> 55:19 89:12 262:14 <b>removed</b> 103:3 212:12 235:3 256:25 <b>Rendell</b> 86:9 <b>reopen</b> 11:19 <b>reordered</b> 168:23 <b>repeat</b> 9:2 16:3 21:8 264:11,12 <b>rephrase</b> 48:25 <b>replied</b> 25:25 30:17,23 262:4 <b>reply</b> 63:14 <b>report</b> 20:23,24 23:9,23,24 24:1 43:3 51:4,6,9,14, 25 53:5 71:7,13, 16 72:7,12,23,24 73:5,9,16 74:24 75:20,23 76:1,2, 12,18,23,25 77:11,21,23,24, 25 78:7 79:11 80:3,9,11,15 82:6,9,10,19 83:3,4,8,10 84:13 86:17,23 88:1,10 90:1,8, 10,12,14,17,23	91:7,10,17,19,25 92:4,14,20 96:4, 7,11,18,19,21 97:17 99:2,10 100:1,4 101:9 102:10,14,21 105:19,22,25 118:12 123:23 124:21 130:2,23 142:6,8 162:9 173:18,19,23 197:19 198:10, 20 203:8 230:15 234:21 249:14, 16,17 252:6 <b>reported</b> 43:16 117:12 119:14 137:5 145:20 165:22 166:14, 15 251:9 <b>reporter</b> 7:3 8:15 14:16 25:9, 11 157:13 264:10 <b>reporting</b> 99:22 165:8 <b>reports</b> 52:18 53:2,10,13,23 71:11,24 72:2,6 73:12,13,15 74:17,21 75:6,8 78:3 82:20,21 92:7,11 96:10, 15,17,23,25 97:11 101:15,18 <b>represent</b> 6:7 36:4 93:24 94:1 100:12 250:16 <b>representation</b> 47:23 48:3 170:25 <b>representation</b> <b>s</b> 192:12 <b>representative</b> 171:22 <b>represented</b> 148:6 181:23 <b>representing</b> 161:22 162:16
---	---	--	---	--

255:4	<b>requirements</b> 40:22 41:7 54:18 235:23 238:12 260:17 261:13	21:11,19	94:18 119:8 130:23 147:6 148:4 212:1 215:16 216:25 217:3,7,19	<b>routinely</b> 84:22
<b>represents</b> 100:15	<b>requires</b> 42:25 57:19 59:18 173:3	<b>responsibility</b> 38:18,23 41:10, 14 42:12 47:17 66:4	<b>reviewed</b> 12:8,9 13:10,12,14 16:11 29:22 30:1 113:7 158:23 166:6 244:10 258:17 262:25 263:3 264:13	<b>row</b> 100:2 235:5 247:24,25 248:11 251:11
<b>request</b> 18:1 22:8,9,21 23:16, 17,18,20 24:8 26:4 27:11 28:1 30:7,9,25 31:5 32:10,13,21 33:2,7,11,15,18, 22 34:13,15,25 35:4 59:24 63:11 100:2 101:22 102:15 136:11 143:22,24 154:6 216:17 261:1,15, 19 262:1,4,5,18, 21 264:23	<b>research</b> 125:18 156:10,12,17 162:7 166:3	<b>responsible</b> 66:2 148:6 190:22 204:3,7, 8,9,14 221:21	<b>reviewing</b> 30:4 119:21 215:11 260:20	<b>Rule</b> 10:25 14:21
<b>requested</b> 22:25 23:1 59:22 201:14 214:13	<b>researching</b> 161:20	<b>responsive</b> 11:7 16:25 26:3, 25 27:11,20 28:1,6,10,15 30:11,14 31:4,10 32:3,13 33:2,11, 15,18,22 34:25 35:3 250:25 261:18 262:5 263:8 264:22	<b>Rich</b> 103:12 108:2	<b>rules</b> 8:9
<b>requesting</b> 60:3 98:22 214:9 262:14	<b>resend</b> 11:13	<b>rest</b> 17:15,19 75:25 206:8	<b>right-hand</b> 78:11 80:6	<b>run</b> 53:2,5,11,12, 13,22,23 71:7, 13,14,25 72:2,6, 7 73:5,9,13,15 75:20 77:25 78:3,7 81:5 90:23 91:10,15, 16,25 92:3,7 96:6,9,11,15,17, 18,21,23,25 97:11,17 99:25 101:15,18 102:9, 21 123:23 249:13,20,21,22 251:19
<b>requests</b> 11:7 12:25 16:12,15, 25 22:2,5,7,11, 12,15 23:8,12 27:21 49:19 215:21 263:1 264:6	<b>residents</b> 113:17 114:1,13 120:4	<b>result</b> 119:13 142:10 173:17, 24 184:13 206:21 247:12 253:8	<b>Right-to-know</b> 22:9,10,13,16, 17,19	<b>running</b> 22:1 76:1 77:21 83:10 100:4
<b>require</b> 205:15 219:10 245:1 263:11	<b>resides</b> 50:14	<b>resulted</b> 225:12 251:18	<b>Rights</b> 37:7,10, 14 38:1,12	<b>runs</b> 92:11 157:17
<b>required</b> 37:13, 25 38:11,13 42:24 56:10 57:9 102:19 133:22 135:19 136:7,15 140:25 141:9 144:25 145:9 148:7 149:10 150:3 154:23 190:23 195:8 204:5 205:5,24 257:5 263:9	<b>resolution</b> 219:15	<b>resulting</b> 240:5	<b>rights'</b> 128:22 134:1	<b>RV</b> 53:11
<b>requirement</b> 44:16 48:8 168:25 215:10	<b>respect</b> 158:5 227:11	<b>results</b> 191:14 201:17 247:8,16 249:18	<b>Robert</b> 151:13, 19	<hr/> <b>S</b> <hr/>
	<b>respond</b> 23:20 31:22 210:6 211:15 212:23 218:6 219:14 238:10 243:12	<b>retain</b> 194:17 207:16	<b>robust</b> 205:11	<b>S-A-V-E</b> 225:16
	<b>responded</b> 103:1 210:9 211:10 212:20 238:15 240:17	<b>retained</b> 167:19 188:22 190:19 191:13 192:1,12 194:18 196:13 199:20 204:19 206:3,17 213:18, 19 214:5,15	<b>Rojas-orta</b> 68:22 69:8 72:9 108:5	<b>sake</b> 8:8
	<b>responding</b> 8:18	<b>returned</b> 216:10,13	<b>role</b> 41:1 58:12 65:8 227:9	<b>samples</b> 255:1
	<b>response</b> 25:22, 24 30:25 31:23 32:1,6 33:19 107:21 200:17, 18 217:5,22 218:1 227:15,16 237:20 261:19 262:21 263:5 264:21	<b>reveal</b> 144:9 195:3	<b>roles</b> 40:22,24	<b>Sari</b> 21:4
	<b>responses</b> 12:10 13:11 211:4,7,9 213:17,21 214:1 227:1,8	<b>review</b> 13:15 15:7 16:17 22:5 52:12 71:23 83:8	<b>roll</b> 223:9 262:15	<b>satisfying</b> 260:16 261:12
	<b>responsibilities</b>		<b>rolls</b> 41:2,6,10, 12,13,16 60:22 61:1 62:14 79:5 93:11 165:18 188:24 219:1 235:3 257:1	<b>SAVE</b> 120:24 225:16 226:15
			<b>room</b> 265:2	<b>scan</b> 107:12 108:19 110:25
			<b>roughly</b> 20:19 24:3	<b>scanned</b> 215:7
				<b>scheduled</b> 139:14
				<b>Schmidt</b> 118:3 119:1 156:6,13

157:1 158:1,2 159:3 160:9,15 161:2,12,15,16, 19 162:8,18 163:2,20 165:3, 12,17 169:13,19, 20 170:8,16,20 171:11,13 172:23 174:13 176:25 178:5 185:17,20 186:8 187:10 219:23 220:22 234:2	<b>scroll</b> 29:19 30:3 188:16 211:1 213:13 227:22 232:19 237:20 <b>scrolling</b> 87:2 <b>scrutiny</b> 141:10 145:10 <b>search</b> 97:9 164:11 238:7 <b>secondhand</b> 94:19 <b>seconds</b> 157:17 233:13 <b>secrecy</b> 193:17 <b>secretary</b> 18:17 20:24,25 21:3,6 86:4,5,7 134:8 149:23 151:13 153:10 158:4 160:9,14 161:1, 14 185:11,14,21 186:16 223:6,25 226:15 227:16 228:15 <b>section</b> 26:19 35:23 36:5,7,12 37:1 39:22,23 45:5,12 52:13 54:10,15 58:8 69:16 <b>security</b> 20:12 21:15 173:6,13 180:20 219:6 226:12 249:19 252:16 256:1 <b>seeking</b> 12:13, 20 161:23 191:24 206:19 207:2 241:16 <b>seeks</b> 262:18 <b>selected</b> 65:4 75:22 80:13 83:10 <b>self- explanatory</b> 32:6	<b>self- functioning</b> 134:13 <b>self-reported</b> 121:17,20 122:21,25 123:1 <b>self-reporting</b> 123:5,8 <b>Senate</b> 151:9 186:12 187:11 <b>send</b> 7:6,12 15:14,17,20 42:24 57:19,23 58:6,7 145:1 147:7,12,19,21 <b>sending</b> 240:14 <b>sends</b> 58:1 <b>sense</b> 10:8 105:23 126:19 133:23 183:20 221:3,5 <b>sensitive</b> 160:11 <b>sentence</b> 54:21 120:21 145:20 146:2 151:22 168:10,13,14 199:18 200:22 201:14 230:9 239:19 <b>sentiments</b> 233:5,21 <b>separate</b> 96:16 145:15 146:12, 14 175:19 224:16 254:7 <b>separately</b> 136:10 <b>September</b> 158:8 159:4,6 171:9 249:23 252:19 253:6 259:8 <b>series</b> 158:6 <b>serve</b> 10:25	<b>served</b> 15:3 140:12 154:6 <b>servers</b> 50:13 99:22 <b>Service</b> 57:25 <b>Services</b> 236:10 <b>SESSION</b> 132:2 <b>set</b> 139:5 <b>Seth</b> 160:15 253:5 <b>Seventeen</b> 51:25 <b>shaking</b> 8:19 <b>share</b> 13:21 50:21 150:1 163:19 200:5 246:2 <b>shared</b> 14:5 156:16 186:1 <b>Shari</b> 244:8 <b>sharing</b> 7:18 45:25 <b>Shawna</b> 85:23 86:2 <b>sheet</b> 256:9 <b>short</b> 47:6 <b>shorthand</b> 52:24 <b>shot</b> 67:14,15 69:1 70:7 74:16, 20 75:20 103:16, 17 104:11 109:8 <b>shots</b> 162:12 <b>show</b> 14:25 35:19 44:24 66:16 67:4 68:7 91:22 92:1 107:16,18 111:5 126:16,17 130:17 232:7 <b>showed</b> 82:19 84:17 92:8 <b>showing</b> 74:15	91:11 93:9 158:20 <b>shown</b> 162:20 254:25 <b>shows</b> 62:25 81:19 82:25 130:23 <b>shrouded</b> 193:17 <b>side</b> 173:10 175:14 179:8 181:25 183:13, 16 <b>sign-off</b> 21:23 <b>signature</b> 265:7 <b>signed</b> 86:3 <b>similar</b> 90:23 91:10,17 124:3 221:19 251:20 <b>similarly</b> 168:3 <b>simply</b> 79:7 99:13 193:16 220:22 226:11 235:11 <b>single</b> 96:14 234:3 236:19 <b>sit</b> 27:25 28:5,10, 14 32:12 34:14 72:6 <b>site</b> 43:4 73:2 88:12,18 128:12 130:5 152:4,7, 13,15 <b>sites</b> 219:7 <b>Six-forty-two</b> 250:17 <b>size</b> 247:21 <b>skipped</b> 209:19 <b>small</b> 45:13 46:2 174:16 <b>smoothly</b> 22:1 <b>snapshot</b> 102:3 255:12
--	--	---	---	--

<b>social</b> 180:20 256:1	152:1,10 206:2 224:1 238:25	44:4 133:10 161:20 221:20	183:24 185:4,6, 22 186:2,12 187:11,14 188:25 189:16, 22 190:6,11,12 191:3 193:16 199:6,20 200:5 201:4,15,18,20 203:4,5,13 204:13,21 206:22 207:17 213:15 216:1,7, 11,19 218:7,20 219:18 221:19 223:15 226:15 229:25 230:18, 22 231:7,8,11, 14,17,18,19 234:10 237:3 238:16,19 241:4, 19,20 242:3 243:24 251:19 254:8 256:22 258:11 259:9 261:10	96:15 113:16 114:11 119:11 120:2 121:15 123:24 133:11 199:7 227:12
<b>software</b> 182:8 183:6	<b>specifics</b> 203:19	<b>starting</b> 26:20 28:1,2 76:11,15 80:21 113:19 172:10,20 233:9 253:18 258:8	<b>stating</b> 228:1	
<b>solicitor</b> 218:18 244:22 245:11	<b>speculation</b> 140:16 226:2	<b>starts</b> 32:9 33:7 46:16 89:6 137:4 199:13 202:6 209:1,9 233:5,20 258:11	<b>statistical</b> 93:16,18	
<b>someone's</b> 226:21	<b>spent</b> 119:20	<b>state</b> 10:1,7,10 12:13 14:22 16:13 18:18,22 19:7,16 20:4,6, 21 25:13,23 29:11 30:13,23, 24 36:13 37:6,13 42:5,17 43:6,10, 12 44:18 47:14, 19,24 48:18 49:3,14,17,24 50:7 51:10 52:21 53:4,7,11,22 55:8,11 58:5,21, 25 59:9,20,25 60:15 65:8,23 66:5,8 67:21 70:20 71:14 86:4,6,7 90:13, 23 92:3,7,10 93:4,9,13 95:5,8 96:20,22,25 97:7 98:16 99:3,5,17, 25 108:25 112:25 118:8,12 128:15,21 135:14,23 136:17,20,25 139:3,6 142:18 143:18 144:8 145:1 146:5 147:4,6,10,18,20 150:3 151:9 155:3 158:5 159:2,12 161:12 163:18,20,25 166:23 167:12 168:6 169:21 170:8,10 171:19, 22 174:18 180:2 181:8,15,24	<b>status</b> 64:19,25 69:16,20,22,25 70:1,12,23 71:8 72:8,22 73:9 75:23 76:1,10, 13,19,23 77:11, 14,16,19 78:12 80:13 83:4,5 84:5 119:18 120:12 121:12, 21 123:12 190:23 204:4 222:5 228:14,20 238:13 240:10 252:2	
<b>sort</b> 109:16 134:13 158:10 248:16	<b>spite</b> 186:8		<b>State's</b> 58:12 101:21 173:10 179:12 183:16 201:2 261:25	
<b>sought</b> 32:10	<b>spoke</b> 16:6 114:8 187:7		<b>stated</b> 199:20 226:13	<b>statutes</b> 83:21
<b>sound</b> 191:23	<b>spoken</b> 43:21 219:22 220:1		<b>statement</b> 188:5,18 194:10, 13 202:24 203:23 210:12 225:11 235:6,21	<b>statute</b> 40:15 44:17 55:20 57:18 65:17 102:19,20 109:3 133:22
<b>sounds</b> 112:16 129:8 191:25	<b>spreadsheet</b> 88:13,14 183:5, 14 246:17 248:16,17 250:15 252:6,7,8 253:17 255:21 256:4,7		<b>statements</b> 228:10	<b>Statutes</b> 54:16
<b>source</b> 84:21 90:19 111:9,12, 13,17 225:17 226:16 255:22	<b>square</b> 228:10		<b>states</b> 36:4 57:21,25 63:24 64:7,16 127:17 145:20 149:16 150:1,8,22,25 162:6 199:18 223:7 224:1 227:9,16 229:12, 18 231:5	<b>statutorily</b> 39:18 57:9 154:19,23
<b>sources</b> 88:20 141:24 142:2 181:14 226:18	<b>SSN</b> 184:5			<b>statutorily-</b> <b>mandated</b> 55:18 60:11
<b>Spanish</b> 169:4	<b>staff</b> 128:3 136:6 166:16 173:7 181:24 201:3,5			<b>statutorily-</b> <b>required</b> 109:5
<b>speak</b> 13:1 53:20 148:4 179:7 228:11 256:17,20	<b>stakeholder</b> 132:19 133:2,5, 7,8 134:14 137:5 139:18,25			<b>statutory</b> 40:21, 22 41:7,21 44:16 48:8 66:13 111:16
<b>speaking</b> 13:7 56:17	<b>stakeholders</b> 116:3 127:20 128:5,14,20 129:11 133:1,13, 20 135:11 139:1		<b>statewide</b> 12:21 19:11 21:13 43:22 47:12 48:9,12,16 62:13	<b>step</b> 118:22 174:16
<b>speaks</b> 41:17 114:6 256:18	<b>stamp</b> 198:23			
<b>special</b> 6:23	<b>stamped</b> 50:22 69:4 242:9			
<b>specific</b> 21:11, 19 38:5 44:12 70:4 71:8,13,16 73:16 76:2 77:24 88:15 96:1 102:4,5,13 117:11 129:18 137:10 139:4,6 140:5 190:2,12 226:3 258:25 259:2	<b>stand</b> 35:8,13 214:24			
<b>specifically</b> 67:19 116:9 136:9 141:11	<b>stands</b> 111:14, 20,21			
	<b>start</b> 20:3 76:6 87:6 117:19 122:8 139:19 199:9 243:5			
	<b>started</b> 20:5			



<b>steps</b> 119:3 218:18 239:22	<b>Supervisor</b> 229:18	109:23,25 119:5, 16,22 120:5 121:6,10 122:1, 13 123:24 124:10 125:17, 20 126:9 137:7 145:22 148:21 149:3,7,8,12 175:19 180:2 182:22 231:12, 15,17,25 235:2 237:6 253:21,23, 24	72:16 100:21 120:21 124:4 130:13 146:3 150:18 156:4,21 165:4 176:13 183:10 192:4 196:25 197:1,3 207:21 212:7 222:1 226:4	113:2,4 114:17, 25 119:14 120:1 121:14 122:4,15 125:2,5,23 127:17 130:17 143:17 144:7 146:4 147:24 151:12,23 152:18 156:19 157:25 158:21, 24 169:14,18 170:2 175:3 176:1 177:15 178:2 181:2 192:11 194:21 219:23 220:2 240:19 241:15, 25
<b>Stevens</b> 21:4	<b>supplementing</b> 254:4		<b>talks</b> 238:19 254:1	<b>testing</b> 92:12 248:2
<b>stick</b> 262:3	<b>support</b> 21:17 41:19 47:17 48:3,5 49:7 59:19 60:3,14 66:9 154:22	<b>system-generated</b> 57:10	<b>task</b> 53:3	<b>theoretical</b> 196:18
<b>sticking</b> 61:17 140:11	<b>supporting</b> 47:20 53:1 55:13 65:9	<b>Systematic</b> 120:23 121:7	<b>tasks</b> 52:16	<b>theoretically</b> 50:3 53:17,19
<b>stored</b> 62:9,17	<b>suppose</b> 137:2	<b>systems</b> 154:20 175:20 176:15	<b>technical</b> 100:5 248:2	<b>theory</b> 53:20
<b>straying</b> 44:10, 12 47:4	<b>supposed</b> 42:6 241:23		<b>Technology</b> 20:12 21:15 173:6,13 249:20 252:16	<b>thing</b> 75:15 134:13 221:20 224:8 233:23 260:19
<b>street</b> 80:16	<b>survive</b> 112:14	<b>T</b>	<b>telling</b> 73:11 95:14	<b>things</b> 20:18 50:13 140:7 146:13 248:24
<b>subject</b> 135:20 140:5 147:3 192:25 194:4 195:11,22 196:16 207:14	<b>suspiciously</b> 234:23	<b>tab</b> 104:24,25 105:17,20 106:1, 2 107:1 109:10, 11 110:9,11	<b>tenured</b> 199:21 200:1,10 201:5 202:7,8	<b>thinking</b> 35:6 112:8
<b>submitted</b> 110:13,18 111:6	<b>system</b> 21:13, 16,17,20,24 22:1,3 41:19,25 42:3 43:20,23 44:1,4,6,8,19 46:25 47:9,12, 15,16,18,20,21, 25 48:12,14,19, 23 49:2,4,7,9,12, 13,16,18 50:6,14 53:1,14 54:22 55:4,12,21,23 57:2 58:9,13,17 59:2,8,13,14,18, 19 60:7,9,16,19, 21,25 61:5 62:9, 16,18,22 63:2,18 64:3,21,22 65:17 66:1,3,10,11 67:17 68:3,6 70:13 71:5,6,11, 23,25 72:3 73:8, 9 74:17 75:7,9, 13,15 78:1,4 82:10 84:5,15 88:16,19,21 89:1 90:20,24 92:4 96:6 98:21 99:18,20 100:18 101:1,17 103:18 104:11,18 108:9, 11,14,16,19	<b>table</b> 248:5,15 250:13,18,21 251:9,19	<b>term</b> 55:15,17 99:20 117:8,11 145:18 153:9,11	<b>thousand</b> 176:24 177:1,25 178:3,17 207:24 219:24 221:22
<b>subordinate</b> 10:11		<b>tabs</b> 104:13,19, 21 109:10	<b>termed</b> 116:9	<b>thread</b> 239:13
<b>subsection</b> 54:18,21		<b>tail</b> 259:14 260:1	<b>terms</b> 39:24 121:11 141:10	<b>threat</b> 146:11,15 147:1
<b>subsequent</b> 185:16 186:22 205:20 240:4		<b>takes</b> 65:20	<b>terrific</b> 158:5	<b>threatened</b> 146:20
<b>subset</b> 132:24		<b>taking</b> 136:20	<b>testified</b> 6:3 8:5 146:22 147:16 151:19 155:14 157:1 170:7 176:25 177:24 186:11 192:9 225:16 240:14 254:24	<b>tie</b> 233:17
<b>substance</b> 9:16		<b>talk</b> 15:9 16:4 18:3 43:20 71:10 113:11 114:25 127:7 140:4 154:6 160:6,8,10 179:1	<b>testify</b> 60:7 61:11 62:2 125:4 144:12 203:16	<b>ties</b> 146:4 224:19
<b>sudden</b> 248:3		<b>talked</b> 20:18 62:8 104:9 132:21,22 145:12 156:9 166:19,20 253:9	<b>testifying</b> 196:3 225:19	<b>tightly</b> 59:8,11
<b>suggest</b> 196:21 220:24		<b>talking</b> 6:19,20, 21,25 22:6 23:12	<b>testimony</b> 9:25 34:24 35:6,7,13 40:25 108:7	
<b>suggesting</b> 244:16				
<b>summarize</b> 127:2				
<b>summarized</b> 250:13				
<b>summarizes</b> 248:16 251:6				
<b>summary</b> 87:20 92:24 93:2 118:18 248:4 250:19				
<b>summer</b> 11:8 158:3,7 264:7				

<p><b>time</b> 19:20 26:2 27:18 31:2 63:1, 12 85:3 93:9 102:3,5,8 104:1 109:6,14 115:8 121:4 122:1,3 124:9,22 125:3 127:5 130:21 131:12,17 134:10,11 146:18 149:23 158:19,25 162:2 164:1 167:11 169:17 171:10 174:14 186:8 196:20 198:4 212:14 221:11 222:13 225:9 233:8 234:3 241:6 252:19 260:25 261:9 262:9</p> <p><b>timeframe</b> 121:23</p> <p><b>timeline</b> 102:12 125:11 127:25 164:23</p> <p><b>times</b> 6:17 8:2 10:11 104:5 106:19 124:24 145:19 187:6 193:25 195:6 200:15,20 201:25 234:3</p> <p><b>title</b> 18:16 36:3 54:15 70:11,15 79:19</p> <p><b>titled</b> 86:23 97:25 151:9</p> <p><b>today</b> 11:1 15:1 27:25 28:5,10,14 32:13 33:2,10, 18,23 34:14 44:11 47:5 60:8 61:10 62:1 72:6 79:9 90:2,8,23 97:4 132:16 139:23 153:17 155:21 158:24 195:9 196:6 201:13 214:24</p>	<p>225:20 251:20 259:14,16 260:14 261:7 263:1,3,7,16,17 264:14</p> <p><b>told</b> 119:1 144:19 152:16 185:17 193:6,24 195:6 200:15,16, 18 201:25 207:5 220:21 260:1</p> <p><b>top</b> 14:20 29:18 35:22 69:15,16, 17 71:12 77:18 78:11 80:2,6 81:6 83:4 87:12 98:5 100:2 103:11,23 104:4, 13 105:13 108:1 112:25 125:24 126:14 151:18 168:18 198:24 210:3 211:25 229:15 230:15 232:12,22,23 236:9 248:9 258:10 259:7</p> <p><b>topic</b> 14:11 144:11 153:20</p> <p><b>topics</b> 14:21 15:10 16:5 44:10,12,13 47:5 61:9,11,14 62:2 139:22 140:5 154:8 155:10,20 156:3 196:22 259:13,15</p> <p><b>Torres</b> 151:13, 19 153:10</p> <p><b>torture</b> 9:10 112:18</p> <p><b>total</b> 24:4 86:24 88:10 126:18,25 175:16 250:9,11, 12 251:23,24 252:1</p> <p><b>totals</b> 87:10,13 88:13,24 89:1 93:16 99:1</p>	<p><b>tough</b> 50:20</p> <p><b>track</b> 63:2 211:9, 11</p> <p><b>tracked</b> 213:17</p> <p><b>transactions</b> 100:18 101:4,8</p> <p><b>transcribe</b> 157:14</p> <p><b>transcribed</b> 157:11</p> <p><b>transcript</b> 157:2</p> <p><b>transition</b> 44:3</p> <p><b>transitioning</b> 122:8</p> <p><b>translated</b> 169:2,5</p> <p><b>transparent</b> 43:16</p> <p><b>Transportation</b> 151:10 166:25 167:8,23 171:19 173:8 174:20,22 181:9,12,25 182:15 184:12, 23 254:12</p> <p><b>Transportation'</b> <b>s</b> 175:14 183:19</p> <p><b>triggered</b> 115:12</p> <p><b>trouble</b> 45:9 118:25 250:2</p> <p><b>true</b> 190:11</p> <p><b>Trump's</b> 233:5, 20</p> <p><b>truthfully</b> 8:12 9:18</p> <p><b>turn</b> 166:4 249:8</p> <p><b>turned</b> 13:13,16 129:4,13 137:17 165:1</p> <p><b>turning</b> 183:8 215:14</p> <p><b>two-year</b> 44:3</p>	<p><b>type</b> 11:9,17 23:10 68:5 88:20 96:21 107:17 109:17 130:22 237:4 241:12 243:23 258:9</p> <p><b>types</b> 8:20 89:6, 19 92:11 109:1 232:3 261:23</p> <p><b>typical</b> 104:22</p> <p><b>typically</b> 102:7, 12 128:22 247:19</p> <hr/> <p><b>U</b></p> <hr/> <p><b>U.S.</b> 121:1 230:1, 3</p> <p><b>ultimate</b> 38:17</p> <p><b>ultimately</b> 38:22 63:15 116:22 128:19 129:6 133:7 142:22 143:15 147:3 217:17</p> <p><b>unclear</b> 217:5</p> <p><b>undeliverable</b> 217:22 218:1,4</p> <p><b>undelivered</b> 240:18</p> <p><b>undergone</b> 115:1</p> <p><b>underneath</b> 248:12</p> <p><b>understand</b> 8:10,13,14,24 9:24 10:14 11:22 12:19 97:14,21 114:20 115:18 116:2 149:2 179:25 182:13 189:18,19 192:2 207:1 224:14 251:7</p> <p><b>understanding</b> 9:17 33:14 38:16 39:24 56:21</p>	<p>118:25 145:7 166:10 190:8 222:8 257:2</p> <p><b>understood</b> 9:14 16:23 110:24 218:16 228:19</p> <p><b>undertake</b> 113:21,25 114:11 187:14</p> <p><b>undertaken</b> 239:15</p> <p><b>undertaking</b> 53:18</p> <p><b>undertook</b> 113:15 114:19 115:3 118:12,24 119:10 120:2,15</p> <p><b>uniform</b> 12:21 19:11 21:13 43:22 47:11 48:9,16 199:7</p> <p><b>United</b> 36:3 57:21,25 63:24 64:6,16 162:5 229:12,18 231:5</p> <p><b>universe</b> 117:17 121:19 141:8 172:9,20 173:21 174:15 184:13 185:18 186:20 212:1 215:16 216:25 217:19 219:12 220:4,22 221:20</p> <p><b>Unlawful</b> 151:11</p> <p><b>unprivileged</b> 194:25</p> <p><b>unreliable</b> 121:5</p> <p><b>update</b> 63:14</p> <p><b>updated</b> 62:20 223:11 224:1,9 228:8</p> <p><b>updates</b> 110:21</p> <p><b>updating</b> 104:22</p>
--	--	---	--	---

<b>upload</b> 109:25	<b>verified</b> 123:10 214:13	<b>voter</b> 22:24 35:15 36:5,8,21, 22 38:6,7,8 40:6, 8,21 41:8,10,20, 21 43:1 47:13 48:4,11,17 49:20 51:4 52:8,15,19 53:4,9 55:16,17, 19,21 57:3,8 58:13,15,18,20, 25 59:25 60:13, 17,18,22,25 61:4,5 62:13,24 63:5,11,12,13, 15,19,23 64:2,6, 13,15,17 65:1,20 66:2 67:16,24 68:19,20 69:9,15 72:12,14 75:23 76:1,18,22 77:11,13,15,16 78:12 79:5,19 80:15,18,20 81:2,23 82:6 84:16 86:23 87:10,12,20 88:11 89:12 91:17 93:11,15, 25 94:1,2,5,7,8, 13 95:3,9,13,23 98:1,6,8 100:1,2, 3,12,15 101:22 102:14,15,18,25 104:22 105:6,8, 14 106:6,10,15, 18 107:10,17,19 108:5 109:13 110:18 113:16, 20 114:11 116:4, 19,25 117:3,17 120:3 122:18 124:22 127:1,18 130:1,5,6 137:7, 17 139:7,9 140:24 141:7 142:24 145:22 148:18,19,20 149:2,5,10,18,20 150:2,10,17 151:11,20 152:5, 11 153:2,7 154:19 165:17, 18 166:17 167:9, 13,23 168:19	169:3,23 170:12 171:3 176:3 177:2,5,7,17 178:17 179:2,13, 16 180:3,10,14, 16,19 182:14 183:1,9 188:5,24 190:22 194:13 199:23 202:10, 24 204:4,11 210:12 212:15 216:17,22 217:11,14 219:1 220:25 221:13 223:9,13 224:3 225:25 226:14 230:10 232:1 235:16,24 238:11 239:23 240:8 241:1 244:11 246:18 248:13 250:22 257:1,6 259:10 262:15 <b>voter's</b> 62:20 63:1,7,10 64:1 68:20,21,24 81:20 82:25 <b>Voteridnum</b> 247:25 <b>voters</b> 36:19 39:5,12 40:9 42:24 43:6,12 52:19 56:1 57:8, 12,19 67:15 78:22 79:1,4 81:7,12,16 82:11,23 83:21 84:5 88:11 91:20 93:10,17,25 117:7 126:23 128:23 131:7 133:12 138:21, 24 149:11 162:13,14 165:22 184:14 218:22 219:10 225:18 234:22 255:3 262:12 <b>votes</b> 104:14,24 105:3 107:2 109:11 126:18	<b>voting</b> 37:7,10, 14 38:1,12 58:2 62:17,19 105:13 106:16 113:1,18 114:2,13 120:4 128:22 134:1 151:11 152:12 154:3,18,20 156:11 163:4 233:23 238:13 <b>VR</b> 52:9,13,14, 22,23 53:2 57:2 67:19 75:10,13, 14 <hr/> <b>W</b> <hr/> <b>wait</b> 216:13 229:1 <b>waive</b> 194:25 <b>waived</b> 265:7 <b>walk</b> 119:3 233:16 <b>Walosik</b> 236:14, 15,16 <b>Walsh</b> 7:21 10:23 11:20 12:7,15,18,23 13:23 14:1,2,6, 10,13 15:2,14, 18,20 16:18 23:11 24:21,24 25:14,18 26:5, 10,15 27:1,7,12, 22 28:3,7,12,18 29:4,13 30:8,15 31:6,12,18,24 32:4,14,17 33:3, 12,24 34:9,19,23 35:9,11 37:15 38:2,14,20 39:13 40:1,12 41:3,17 44:9 45:19,23 46:1,9 47:2,22 48:21 50:2 51:1, 15,19 52:10 53:24 57:4 59:3, 15 60:1,20 61:8, 18,24 62:11,23 63:8 64:8 65:3, 13 66:7 67:9,23
<b>uploaded</b> 109:22 110:5 182:9	<b>verify</b> 98:22 99:6 100:8 123:19 256:21,23			
<b>upset</b> 260:8	<b>verifying</b> 225:18 226:13			
<b>USCS</b> 35:23 45:4	<b>Veronica</b> 21:7,9			
<b>use-nationally-recognized</b> 150:9	<b>versa</b> 97:20			
<b>user</b> 50:11 60:11 71:6,23 73:8 75:22,25 80:12 92:6 96:14,24 104:22 107:6 109:9 110:10	<b>version</b> 45:18			
<b>users</b> 59:20 168:24	<b>versus</b> 11:25			
<b>utilize</b> 71:6	<b>very-high</b> 221:14			
<hr/> <b>V</b> <hr/>	<b>vice</b> 97:20			
<b>valid</b> 72:25	<b>video</b> 157:8,25 158:21 169:12, 14,18 170:2			
<b>validate</b> 95:20 101:19 123:19	<b>videotape</b> 157:3			
<b>validated</b> 130:7	<b>view</b> 14:7			
<b>validating</b> 121:11	<b>virtual</b> 135:5			
<b>validation</b> 99:14	<b>virtually</b> 137:21			
<b>Vansickle</b> 229:23	<b>vote</b> 36:20 41:8, 9 52:17 53:5 81:1,20,22 82:7 92:2 97:3 105:3, 5,9,17 106:2,15 110:20 115:5 117:4 122:5 124:25 125:15, 16 126:4,16 137:8 140:1,14 145:24 158:18 162:3,24 163:3, 5,13,15,22 165:9 178:13 180:18 186:11 228:21 234:22 257:11			
<b>variety</b> 53:13 71:11 72:1 152:21 172:17 221:12	<b>voted</b> 72:12 80:22,24 81:16, 19,24 82:3,8,13, 15 91:9,12,20 104:5 105:6 106:11,19,23 124:22,24 125:7 126:23 233:24 238:6 256:2 257:8			
<b>vast</b> 10:5				
<b>vehicle</b> 141:8 148:18 150:2 177:3,4,18,22 181:13 238:24				
<b>verbatim</b> 190:24				
<b>verification</b> 120:24 121:7 223:14				



68:7 69:24 70:14 71:21 74:1 75:1, 21 78:9,24 79:6 81:10,17 82:4, 14,16 83:7,15,23 84:1 85:2,9 87:4, 8 90:15 91:14,21 92:5 93:12 94:9 101:14 102:1,23 103:6 105:2 106:13,20 107:13,20 108:12,22 109:20 110:1,6 111:3 112:7,16 114:3,16 115:9, 13 116:20 117:1 119:19 120:8,13 121:9 122:23 123:15 124:6 125:9 126:10 129:15 130:19 131:1,8,17,18,21 133:14 135:16 136:3,13,22 137:1,11 138:17 139:8,21 140:2, 4,15 141:14 142:12,21 143:5, 12,21 144:1,10, 14,18 145:2,4 146:21 147:9,13, 23 148:10,14,22 150:14 152:8,16, 25 153:13,23 154:5 155:7,19 156:14,21 157:10 162:19 163:6,23 164:2, 7,13,15,19 165:20 167:1,14, 17 168:1,9 170:17 171:7,14, 17 173:2 174:1,3 175:2,22,25 176:17 177:12, 14 178:1,21 179:5,17,19 180:12 181:1,22 182:11 183:17 184:16 185:1,24 186:6,24 187:2, 5,19,22 189:3, 10,24 190:7,14	191:5,12,20 192:5 193:5,10, 22 194:20 195:5, 17,24 196:2,12 197:3,13 199:3 200:3,7,14,24 201:6,22 202:14, 20 203:9,15 204:15,23 205:7 206:1,14 207:4, 18 208:15,21 209:7,12 211:8, 13 213:4 214:17, 20 215:1,4 217:16 218:2 219:2,20 220:7, 13,20 222:6 223:21 224:7,13 225:3,21 226:1, 19 228:17,24,25 233:11,13 234:13 235:8 238:21 239:7,25 241:7,14,21 242:22 244:2,4, 5,20 245:6,22, 23,25 247:14 248:6,19,23 249:3 250:4 251:2,6 252:10 253:11 256:10 257:9,15 258:24 259:12 260:1,5 261:3,14 262:2, 17 263:2,20 264:4,17 265:1,3  <b>Wanda</b> 257:25 259:3  <b>wanted</b> 7:1 15:25 56:18 58:25 59:4 61:2 115:18 147:1 160:10 165:11  <b>warnings</b> 186:9 187:10  <b>warrants</b> 244:15,19 245:4  <b>Web</b> 43:4 73:2 88:12,18 128:11 130:5 152:4,7, 13,15	<b>week</b> 17:4,8,10, 14 264:6  <b>weekly</b> 22:23 72:15 88:10,14  <b>weeks</b> 135:8 137:20  <b>weird</b> 250:1  <b>well- established</b> 184:9  <b>Western</b> 229:19 230:2  <b>whittled</b> 221:24  <b>widely</b> 138:22  <b>window</b> 7:13,17 171:10  <b>witness's</b> 147:24  <b>Wolf</b> 86:10  <b>Women</b> 128:23 133:12 138:21, 23  <b>word</b> 10:4 99:18 100:11,20 162:22 248:3 253:15  <b>words</b> 8:18 77:13,17  <b>work</b> 23:6 130:4, 10 133:8 142:10 143:8,10 148:12, 24 152:3,10 181:11 189:5,12 190:1,3,9 191:7, 16 192:3 207:9 244:22  <b>work-in- progress</b> 254:5 255:12  <b>work-product</b> 141:17 191:21 192:16 194:3 195:12 196:15 202:17 203:18 204:18 206:5 208:23 220:10	<b>worked</b> 173:9  <b>working</b> 7:17 67:8 73:24 127:19,21 128:1, 3,18 129:5,7,14, 17,18,20 130:2, 3,4 132:20,24 137:19 139:7,11 155:15 162:1 167:7 168:16 173:4 197:23 199:14 202:6 209:6,23 254:3  <b>workings</b> 60:7  <b>works</b> 8:7 71:11 100:6  <b>wrap-up</b> 259:22  <b>write</b> 224:4 264:19  <b>writing</b> 13:1  <b>written</b> 12:24 113:2,4 143:23 151:12 152:17 225:8 253:18 263:5  <b>wrong</b> 46:14 164:23  <b>wrote</b> 104:4 140:22 238:4  <hr/> <b>X</b> <hr/> <b>XNC</b> 77:16 78:12,16 80:7  <hr/> <b>Y</b> <hr/> <b>Yahoo</b> 243:3,5, 7,10  <b>year</b> 20:3 42:11 98:19 101:5 102:3 248:11 251:8  <b>years</b> 19:25 20:6 36:14 121:24 126:5 133:9 135:2 231:3	235:4,12 243:19  <b>yesterday</b> 249:6  <b>yielded</b> 140:23 190:21 204:3  <hr/> <b>Z</b> <hr/> <b>ZOOM</b> 6:16  <b>ZOOM-TYPE</b> 6:21
--	---	--	---	--